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The Expansion of The Family Division of The Court of Queen's Bench:

Feasibility Study

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Executive Summary

Since the establishment of the Family Division of the Court of Queen's Bench on July 1, 1984 consideration has been given to expanding this court to the remainder of the province. In April, 1986, at the request of the Attorney General, the Research, Planning and Evaluation Branch initiated a study to examine the feasibility of expanding the Family Division.

The findings of this study indicate that, outside the Eastern half of the province, both family law practitioners and judges perceive the current approach to dealing with family matters to be less than adequate. Within the Eastern half of the province, or more specifically, in Winnipeg, the "unified family court" model, complete with "family specialist" judges and masters and support services, is perceived to be a more effective means of dealing with family matters. Apart from some fairly serious administrative or operational issues, family law practitioners were quite satisfied overall with the Family Division of The Court of Queen's Bench. The major problems identified with the current approach to dealing with family law and child protection matters are:

<u>Outside of the Eastern Half of the Province:</u>

* Inaccessibility - In the northern communities, the accessibility of the courts for family and child protection matters was considered to be poor.
* Overlapping and Fragmented Jurisdiction - Inefficiencies, inconsistencies and confusion result from having more than one court dealing with family matters.
* Inconsistent Rules and Procedures - Different rules and procedures throughout the province for dealing with family law and child protection matters creates confusion and inconsistencies.

* Low Status - Family and child protection matters are often given lowest priority by the courts. This has a negative impact on the quality of hearings.

*A Lack of Social Services - Currently, mediation services are not offered outside of the Eastern half of the province, and assessments are rarely ordered due to unreasonable time delays.

The Family Division of the Court of Queen's Bench:

* Scheduling Inconveniences - The length of time counsel and clients have to wait for pretrials, appearances before the referee and the hearing of motions creates inconveniences and serves to increase clients' legal fees.

* Deputy Registrar's Office - Inconsistency of service and a poor attitude on the part of some staff create unnecssary inconveniences for practitioners and result in delays.

Recommendations:

The recommendations of this report are intended to improve family court services in Manitoba. These recommendations refer specifically to areas outside of the Eastern half of the province, to the Family Division of the Court of Queen's Bench, and to the Deputy Registrar's Office (the Court Operation). These recommendations are:

* Expand the Family Division of the Court of Queen's Bench to the remainder of the province.

* Establish a resident Family Division, Court of Queen's Bench judge in Brandon.

* Expand the social service component of the Family Division to serve the remainder of the province.

* Disseminate information regarding the philosophy of a "unified family court" and the rules and procedures of the Family Division, Court of Queen's Bench to practitioners outside the Eastern half of the province, and the establishment of open lines of communication between judges, family law practitioners and Court Services staff.

The Family Division of The Court of Queen's Bench:

* Improve the operation of the Family Division of the Court of Queen's Bench prior to the expansion of this Court to the remainder of the province.

* Implement a new scheduling procedure that will decrease the length of time counsel and clients have to wait for pretrials.

* Conduct a more detailed review of the scheduling of appearances before the referee and the hearing of motions to determine the acceptability of the waiting time for clients and counsel. Implement improvements to this system if necessary.

* Attempt to increase the accessibility of the Family Division for matters of an emergency nature, and streamline the system for uncontested matters.

* Attempt to increase the accessibility of the Family Division during the summer months.

* Establish training programs designed to develop and improve the mediation skills of the Judges of the Family Division.

Deputy Registrar's Office:

* Conduct workshops and training programs with the registry staff of the Deputy Registrar's Office to improve their abilities to carry out their responsibilities in a more informed and friendly manner.

* Establish a consistent filing system province-wide for family and child protection matters.

* Develop a systematic process for the gathering of statistics on family and child protection matters throughout the province.

* Management consultants should be hired to advise and make recommendations regarding the Deputy Registrar's Office. The two major areas that should be addressed by consultants are the problems of the Deputy Registrar's Office in Winnipeg, and the impact the expansion of the Family Division of the Court of Queen's Bench would have on the Court offices outside of Winnipeg.

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I Introduction

At the request of the Attorney General, the Research, Planning and Evaluation Branch conducted a feasibility study of the expansion of the Family Division, Court of Queen's Bench. The major purpose of the research was to review the current approach of dealing with family law matters in Manitoba, and to provide case load data. Based on the information that was collected, proposals have been developed for a more effective approach for dealing with family law matters.

This report consists of four major sections. Section 1 reviews the background materials regarding the unified family court concept, outlines the current approach to dealing with family law matters in Manitoba, and describes the research objectives and methodology of the study that was carried out.

Section 2 presents the research findings relating to the perceptions and attitudes of judges, family law practitioners and social service agencies toward the current approach to dealing with family law matters outside of the Eastern half of the province. This component of the research study involved interviews with representatives of the judiciary, family law practitioners and social service agencies who provide services to Manitobans outside of the Eastern half of the province.

Section 3 reviews the effectiveness and efficiency of the Family Division, Court of Queen's Bench from the perspective of the judiciary, family law practitioners and social service agencies.

Section 4 presents a summary of the court case load statistics that were collected throughout the province. These data pertain to all family matters, including child protection matters, that were heard by the Court of Queen's Bench and the Provincial Court over a one year period.

A discussion of the findings and recommendations to improve the current system can be found in the final section of this report.

A glossary can be found at the conclusion of this report.

1. Background

In 1974 the Law Reform Commission of Canada recommended the creation of a court with exclusive, original jurisdiction in all family law matters. This recommendation was based on extensive study of the conventional approaches of dealing with family law matters which were deemed to be extremely inadequate in serving the best interests of families seeking legal resolution of their problems and in serving the best interests of society in general. It was the Commission's view that conventional approaches, involving superior courts, family courts and provincial courts create confusion and frustration, are needlessly expensive, provide piece-meal and inconsistent legal solutions and make little contribution to preserving and strengthening families or of providing humane and constructive solutions in situations where reconciliation is impossible (Law Reform Commission, 1974). The unified family court concept was proposed as an alternative and possibly better approach for dealing with these issues.

In order to test the proposed model, unified family courts were established in four sites on a three year demonstration project basis. These sites were: Hamilton (July, 1977), Saskatoon (1978), St. John's (1979) and Fredericton (November, 1979). Evaluations of each of these courts were conducted by independent evaluators, each of whom concluded that the unified family court model offers a means of dealing with family law matters that is superior to conventional approaches. The concept of unification was determined to be an appropriate and a rational solution to the problems,

identified by the Law Reform Commission of Canada, in administering family law. Based on the research findings the evaluators recommended the continuation of their respective projects beyond the demonstration phase. The major conclusions drawn from these evaluations are summarized below:

1. Intake and counselling services attached to the court can mitigate the adversarial approach and produce more amicable settlements. Further, pre-trial hearings and having non-judicial staff authorized to act as Justices of the Peace can also reduce the adversary approach, particularly when used in conjunction with the social arm.

2. There was evidence that clients' pain, bitterness and confusion is reduced. Conciliation and/or court legal services increased clients' understanding or their options and to some extent, prepared them for their experience in court. As well, speciality judges were perceived to have an understanding of the problems and to be concerned about making a decision that was fair to both parties.

3. Unification has resulted in better and more compassionate justice.

4. Unification does not contribute to preserving and strengthening the family in its most literal meaning. The focus of the courts has been directed toward conciliation as opposed to reconciliation. It is agreed that once clients have come to the court, it is too late in the breakdown of their relationship for reconciliation counselling to be effective, feasible or even desirable.

5. A unified family court model is a more efficient means of administering family law. Having one court do what was previously done in two or more courts creates savings in staff, facilities and judges.

The unified family courts established in each of the four sites were continued beyond the demonstration phase and all are operating today. Only one province, namely New Brunswick, has implemented the unified family court concept on a province-wide basis. According to the Director of Court Services in New Brunswick, implementation met with few problems and the system is working well. While neither Saskatchewan nor Newfoundland have expanded their unified family court models, both provinces have given this matter serious consideration. The failure of these provinces to expand the jurisdiction of their Family Courts is attributed to a lack of financial resources for expansion of conciliation services, and a lack of political will. The province of Ontario has given little consideration to expanding their unified family court model other than to conduct a preliminary analysis of resource requirements. However, they are currently conducting a comprehensive review of all courts and this issue may be addressed .

2. The Manitoba Approach to Family Law Matters.

In a report prepared for the Attorney General of Manitoba, Carr (1982) recommended the establishment of a unified family court in the Eastern Judicial District of Manitoba that would have exclusive jurisdiction to deal with family matters. The importance of conciliation, or the social arm of the court was emphasized and it was recommended that conciliators should be senior social workers with extensive experience in family therapy. Following Carr's (1982) recommendation the unified family court model was implemented under the Court of Queen's Bench in limited areas of the province (Winnipeg, St. Boniface and Selkirk) on July 1, 1984.

The present approach in Manitoba for dealing with family matters varies from area to area. In Winnipeg, St.Boniface and Selkirk the Family Division of

Thompson
Flin Flon
The Pas
"EASTERN HALF OF PROVINCE"
Selkirk
Winnipeg
St. Boniface
Brandon

the Court of Queen's Bench has exclusive jurisdiction to deal with family matters. In the areas outside of Winnipeg, St. Boniface and Selkirk but within the "Eastern half of the province" (sometimes referred to as the old Eastern Judicial District), either the Family Division of the Court of Queen's Bench or the Provincial Court can hear certain family matters such as applications for orders of separation, custody, access and maintenance arising on separation and child protection cases. Matters such as divorce, custody, access and maintenance arising in divorce proceedings, the division of marital property and adoption must be dealt with by the Family Division of the Court of Queen's Bench. Outside of the Eastern half of the province the old rules and procedures still apply. That is, the general Court of Queen's Bench has concurrent jurisdiction with the Provincial Court for family law matters that fall within the jurisdiction of the Provincial Court. The Court of Queen's Bench has exclusive jurisdiction over matters such as divorce, custody, access and maintenance arising in divorce proceedings, the division of marital property and adoption. The Provincial Court hears all child protection matters.

The Family Division of The Court of Queen's Bench has a court-connected conciliation service. Family Conciliation, a Community Services' program, provides mediation and conciliation services and conducts court-ordered assessments. This service is located only in Winnipeg and provides services to Manitobans who reside within the jurisdiction of the Family Division, Court of Queen's Bench. Outside of the Family Division's jurisdiction, mediation services are generally not available and assessments are conducted by either Child and Family Services agencies or the regional offices of Child and Family Services. At this time, no particular agency is mandated to conduct assessments.

Diagram 1

Winnipeg/St. Boniface/ Selkirk	Eastern Half of Province (Excluding Wpg. St. Boniface & Selkirk)	Outside the Eastern Half of Province
- The Family Division of the Court of Queen's Bench has exclusive jurisdiction over all family and child protection matters. - Family Conciliation provides conciliation and mediation services and conducts assessments when ordered to do so by the Court.	- The Family Division of the Court of Queen's Bench and the Provincial Court have concurrent jurisdiction for family law and child protection matters. - Matters such as divorce, custody, access & maintenance arising in divorce proceedings, division of marital property & adoption can be heard only the judges of the Family Division, Court of Queen's Bench. - With respect to those matters over which the Family Division, Court of Queen's Bench and the Provincial Court have concurrent jurisdiction, the public has a choice of having the matter heard by a judge of the Family Division (in Winnipeg, St. Boniface or Selkirk), or by a judge of the Provincial Court. - Mediation and conciliation services are not offered and are generally unavailable. No agency is mandated to conduct assessments. (Family Conciliation works in conjuction with the Family Division, Court of Queen's Bench in Winnipeg, St. Boniface and Selkirk)	- The Court of Queen's Bench and the Provincial Court have concurrent jurisdiction. (The Family Division of the Court of Queen's Bench does not have jurisdiction outside the Eastern half of the province.) - The Court of Queen's Bench has exclusive jurisdiction over certain matters such as divorce, custody, access & maintenance arising in divorce proceedings, division of marital property & adoption. - The Provincial Court hears all Child Protection matters. - With respect to those matters over which the Court of Queen's Bench and the Provincial Court have concurrent jurisdiction, the public has a choice with respect to which Court hears their matter. - Mediation and conciliation services are not offered by the Court and are generally unavailable. No agency is mandated to conduct assessments.

Diagram 1 illustrates the varying approaches for dealing with family matters throughout Manitoba

3. Research Objectives and Methodology

The purpose of this study was to review the current approach to dealing with family law matters in Manitoba and to make recommendations on how to improve this service. The information necessary to address this issue related to three major areas. The first area involved an examination of the perceptions and attitudes of the judiciary, family law practitioners and social service agencies toward the current approach to dealing with family law matters outside of the Eastern half of the province, and their opinions of how the system can best be improved. The second area consisted of an examination of the perceptions and attitudes of the judiciary, family law practitioners and social service agencies toward the Family Division, Court of Queen's Bench. The final area involved the collection of basic statistical information from the courts throughout Manitoba on family law matters. The research objectives and methodology related to each of these areas will be reviewed.

(I) Perceptions and Attitudes of the Current Approach to Dealing With Family Law Matters Outside of the Eastern half of the province.

Research Objectives:

1. To determine perceptions of the strengths and weaknesses of the current approach to dealing with family law matters, including perceptions of the accessiblity, efficiency and quality of service provided.

2. To determine the level of support or opposition to the expansion of the jurisdiction of the Family Division, Court of Queen's Bench.

3. To identify the perceived benefits and disadvantages of expanding the jurisdiction of the Family Division, Court of Queen's Bench.

4. To determine perceptions of how the current approach can best be improved to satisfy the needs of practitioners and clients.

Methodology:

Data were collected by interviewing the judiciary, family law practitioners and social service agencies. Interviews were conducted with individuals who actually resided outside of the Eastern half of the province, or those who were involved in the administration of the courts in those areas. The number of interviews conducted within each of these groups and the location is as follows:

	The Judiciary	Family Law Practitioners	Social Service Agencies
Brandon -	2	6	1
Dauphin -	3	4	1
Russell -	1		
Portage -	1	5	
The Pas -	1	8	1
Thompson -	1	2	6
Flin Flon -		2	
Winnipeg -	3	1	
	12	28	9

The results of this survey are presented in Section II of this report.

(II) Perceptions and Attitudes of the Family Division, Court of Queen's Bench.

Research Objectives:

1. To examine attitudes toward the unified family court concept, and to each component of the model (i.e. specialists judges, social services, pre-trials, appearances before the referee, etc.)

2. To determine the perceived strengths and weaknesses of the Family Division, Court of Queen's Bench, including attitudes toward the accessibility, efficiency and the quality of services provided by the Family Division, Court of Queen's Bench.

3. To examine attitudes toward the efficiency, quality and effectiveness of the service provided by Family Conciliation.

Methodology:

This data were collected through interviews with each of the Judges and the Master of the Family Division, Court of Queen's Bench, and through a questionnaire mailed out to Winnipeg family law practitioners. A total of 68 questionnaires were mailed out to family law practitioners. Sixty-five questionnaires were mailed to lawyers who were identified as having fairly extensive family law practices (defined as approximately 50% or more of their case load). A further 3 questionnaires were mailed out to lawyers who were counsel for Child and Family Service Agencies. A total of 38 (58%) Winnipeg family law practitioners completed and returned the questionnaire.

The results of this component of the study are reviewed in Section III of this report. (A copy of this questionnaire and the detailed findings can be found in Appendix A).

(III) Statistical Data.

Research Objectives:

To provide the following statistical information:

1. The number and type of family law and child protection matters handled by the Provincial Court and the Court of Queen's Bench outside of the Eastern half of the province, and by the Family Division, Court of Queen's Bench in each of Winnipeg, St. Boniface and Selkirk.

2. The average length of time required to process the various types of court orders relating to family law and child welfare matters.

3. The number of contested custody and/or access cases under each of the Divorce Act and the Family Maintenance Act in each of the Provincial Court, the Court of Queen's Bench and the Family Division, Court of Queen's Bench, and the place of residence of clients.

4. The number of court-ordered assessments and the place of residence of persons involved in these assessments.

5. The number of cases in the Family Division, Court of Queen's Bench that had contact with Family Conciliation, the source of referral and the nature of this contact.

Methodology:

This data were collected from court files in each of the Provincial Court, The Court of Queen's Bench and the Family Division of The Court of Queen's Bench. Information on applications and petitions filed between July 1, 1984 and June 31, 1985 were recorded on a structured data collection instrument. In most courts data were collected on all applications and petitions filed within the one year window however, in some locations the filing system made it extremely difficult to locate all of the relevant files. In Winnipeg and Brandon a systematic sampling process was used because of the large volume of files.

In order to determine whether clients of the Family Division, Court of Queen's Bench had contact with Family Conciliation, the files from this court that were reviewed were cross-referenced with Family Conciliation's files. If the parties had contact with this service, information on the nature and type of contact were recorded on a structured data collection instrument.

A summary of this statistical information is presented in Section IV of this report. A copy of the data collection instruments and the detailed results can be found in Appendices B through E.

II RESULTS:

Perceptions and Attitudes Toward the Current Approach to Dealing With Family Law Matters Outside the Eastern Half of the Province.

1. Introduction

In this section of this report we will review the results of the interviews conducted with members of the judiciary, family law practitioners and social service agencies who provide services in areas outside of the Eastern half of the province. All respondents interviewed were asked a series of questions relating to their perceptions and attitudes of the strengths and weaknesses of the current approach, their attitudes toward the expansion of the jurisdiction of the Family Division, Court of Queen's Bench, and their perceptions of how the current approach can best be improved to meet the communities needs. Each of these areas will be discussed in detail in this section

2. Perceptions and Attitudes Toward the Current Approach

Respondents' perceptions and attitudes toward the current approach to dealing with family matters varied greatly. There was little consensus among respondents, either in terms of geography or respondent group (judges, lawyers and social service agencies) regarding the strengths and weaknesses of the system. However, very few respondents were completely satisfied with the current approach and the overwhelming majority of respondents perceived that there were serious problems that required immediate attention.

While there was a lack of consensus regarding the strengths and weaknesses of the current approach to dealing with family law matters, there were some trends that were evident. The perceived strengths of and the problems identified with the current approach will be discussed in detail.

a) Strengths Identified:

Accessibility:

In some communities, namely Brandon, Portage and Dauphin, the accessibility of the courts to deal with family law matters was considered to be extremely good. These are communities that have a resident Court of Queen's Bench judge and in Brandon and Dauphin, a resident Provincial Court judge as well. Generally, family law practitioners in these communities did not have any complaints regarding the accessibility of the courts. There were however, complaints regarding infrequent sittings during the summer months.

Judges who resided outside of Winnipeg frequently stated that one of the strengths of the current system is that it is extremely accessible, particularly for the handling of child protection cases and matters of an emergency nature. They attributed this to the large number of communities served by the Provincial Court and frequent sittings.

Informality:

It was generally accepted that the relative informality of the Provincial Court was a factor that greatly improved the quality of service provided. Lawyers and social service agencies appreciated the relaxation of the rules and procedures and the informal atmosphere of the court, and they felt that this made the whole court process more comprehensible and therefore, more comfortable for their clients.

Efficiency:

The Provincial Court was considered to be quite efficient in dealing with family matters. Family law practitioners indicated that a strength of that court was that there were few steps involved, the forms were short and could be completed and filed quickly, and that oral evidence was accepted. All of these factors were believed to contribute to the efficiency of the Provincial Court.

b) Problems Identified:

Accessibility of the Courts in the North:

The accessibility of the courts in the northern communities was perceived to be quite poor. Family law practitioners and social service agencies expressed concern about infrequent Provincial Court sittings in the smaller northern communities, and infrequent Court of Queen's Bench sittings throughout the north.

Lack of accessibility of the courts was perceived to be the cause of injustices in the form of undue delays and unsatisfactory consent agreements. Family law practitioners in the northern communities expressed concern regarding the length of time required to get a matter dealt with in the Court of Queen's Bench. Infrequent sittings as well as circuit judges' reluctance to be seized of a case were perceived to be the major causes of delays. These concerns were generally not expressed in regards to the Provincial Court.

Many practitioners indicated that the inaccessibility of the courts for matters of an emergency nature (i.e. exparte orders and interim orders) was a source of undue hardship for their clients. Further, they stated that they sometimes encouraged clients to sign consent agreements that were not always in their clients' best interest. Less than satisfactory consent agreements

were, in some cases, believed to be better than the confusion, frustration and high costs clients would have to deal with if the matter was contested in court. The practice of obstruction of justice on the part of some lawyers was also believed to be encouraged by infrequent court sittings.

Social service agencies indicated that they sometimes had to wait several months to have a child protection application heard in court. This apparently occurs when the circuit court has to cancel a sitting. Apparently a cancelled sitting is not rescheduled. In a community visited by the circuit court only once every 6 or 8 weeks, a cancelled sitting means that there will not be a court sitting for 12 or 16 weeks.

Social service agencies also expressed concern that individuals who have an interest in a particular child protection case, such as the child's parents and relatives, sometimes have to travel great distances to attend a hearing. This problem is accentuated by the fact that contested child protection cases are usually heard in the judicial and administrative centers.

Many judges who sit in communities outside of Winnipeg agreed that the courts were becoming backlogged because of increasing numbers of family law matters and in particular, child protection cases. Lawyers felt that circuit judges were often expected to hear too many cases in one sitting. They stated that Provincial judges on circuit were rarely given the opportunity to prepare for a hearing and this was perceived to be detrimental to the quality of hearings and judgements handed down.

Conference calls were thought to be a practical means of increasing the accessibility of the courts however, many respondents were critical of the very limited use of this technique. It was believed that a hearing by conference call can only be requested if the matter concerns a motion for an exparte order, or if

both parties consent. It was suggested that the rules should be expanded to include cases where notice can be served.

The Low Status of Family Matters:

The low status or lack of importance of family law matters in the court was also perceived to be a problem with the current approach. In reference to northern communities, some respondents noted that family and child protection matters are usually tacked on to the end of a docket and heard at the end of the day when all criminal matters have been heard. Court dockets are arranged by crown attorneys whose priorities naturally lie in making most efficient use of their own time. As a result, criminal matters are scheduled first and family and child protection matters are generally heard last. Both the judiciary and family law practitioners found this system to be unacceptable.

The practice of adding family matters to the end of a docket was seen as a particular disadvantage for residents of communities served by a circuit court. Circuit courts are to a large extent controlled by environmental factors such as the weather and the number of hours of daylight (some small planes used by circuit courts can only fly during daylight hours). As a result, if the court is unable to hear all matters on a docket, frequently it is the family and child protection matters that are adjourned for the next sitting.

The quality of hearing was also perceived to suffer as a result of scheduling family matters for the end of the day. It is generally accepted that family matters tend to be complex and emotional in nature; that they often require the judge to play many roles - mediator, counsellor and judge. To expect a judge, after hearing criminal matters all day or even all week, to "switch hats" and hear family matters was thought to be unreasonable. This was

considered to not only be an unfair expectation of judges, but also unfair treatment to the lawyers and the public involved in these cases.

Some judges and lawyers who were interviewed stated that while Provincial Court judges and Queen's Bench (general) judges do a good job in dealing with family and child protection matters, it is fairly evident that many of them (with the exception of judges of the Family Division of the Provincial Court), really dislike hearing these cases. They stated that most judges are better qualified to handle criminal matters than family matters, and that they preferred to do criminal work. This bias on the part of judges was perceived to be a factor that perpetuates the low status of family matters in the courts outside of the Eastern half of the province.

Overlapping and Fragmented Jurisdiction:

Another factor that emerged as a weakness of the current approach is overlapping and fragmented jurisdiction. Having two courts with overlapping jurisdiction leads to duplication of effort, confusion and frustration to participants, and it creates the potential for "forum-shopping", the practice of obstruction and inconsistency in judgments.

Often matters have to be transferred from one court to another, causing a duplication of effort on the part of judges, lawyers, court administrators and clients. An example that was frequently cited was the enforcement of maintenance. Maintenance is enforced by the Provincial Court and a person in default of maintenance has to appear before a Provincial judge. However, the matter may require that a motion be made in the Court of Queen's Bench for the variation of an order.

Some respondents stated that the limited jurisdiction of the Provincial Court sometimes interferes with a Provincial Court judge's ability to resolve

matters in the best way possible. For example, it was stated that the best way of dealing with a variation of maintenance matter may be by ordering the settling of some property. However, Provincial Court judges do not have jurisdiction to grant orders under the Marital Property Act.

"Forum-shopping" apparently does occur to a certain extent as a result of overlapping jurisdiction. Family law practitioners stated that they sometimes decided which court to deal with by the nature of a specific issue. The less formal atmosphere of the Provincial Court was perceived to be more suited for some types of cases than others, and the more formal Court of Queen's Bench was preferred for other types of cases. Such discretion on the part of lawyers may affect the outcome of a hearing and may not always be in the best interest of their clients. Judges noted that it is difficult enough to have consistency between judges of the same court, let alone judges of different courts.

Fragmented and overlapping jurisdiction also creates the potential for the practice of the obstruction of justice. Respondents stated that there were times when applications regarding the same matter were filed in both courts. A lawyer can easily gain some time if he or she files an application in one court at the same time the lawyer representing their client's spouse is filing an application in the other court. This creates delays while the system sorts out which court will deal with the matter.

Inconsistent Rules and Procedures:

Respondents indicated that the current approach to dealing with family matters outside the Eastern half of the province involves two different sets of rules and procedures, one for the Provincial Court and one for the Court of Queen's Bench. It was generally believed that two sets of rules and procedures create unnecessary confusion for both lawyers and clients.

There was also concern about the lack of uniformity of rules and procedures throughout the province. Lawyers practicing family law in communities outside of the Eastern half of the province indicated that the lack of consistency of rules and forms throughout the province made it complicated and confusing for them to deal with the Family Division, Court of Queen's Bench. This was a sensitive issue for some lawyers who indicated that their colleagues in Winnipeg perceived them to be second-rate lawyers because they were practicing outside the jurisdiction of the Family Division, Court of Queen's Bench. Some indicated that the Deputy Registrar's Office in Winnipeg was extremely impatient and uncooperative with lawyers who practice outside of Winnipeg. Overall, the lack of uniformity of rules and procedures throughout the province was considered to be a major weakness in the current approach to family law matters.

Lack of Social Services:

Lack of social services was defined as a particularly serious problem by respondents. Family law practitioners were concerned that they are forced to spend a great deal of their time counselling clients and providing other types of social services for which they had no training or skills. As a result, they felt that social problems are sometimes translated into legal problems and matters are dealt with in court that could be better resolved through some other means. A lack of an organized social service component was perceived to be a serious shortcoming to the current approach to dealing with family matters.

Judges stated that they rarely ordered assessments because of the length of time required to obtain a report. Time delays (up to 8 months in some areas), were attributed either to a lack of resources, or to the low priority given to orders for assessments by the social service agencies.

Many respondents also had concerns about the quality of services provided by the social service agencies who are currently dealing with family matters, however, the agencies themselves were frequently not blamed. Since no particular agency is mandated to do assessments, it was generally accepted that agencies provided this service only because there is no one else available. In this sense, many lawyers and judges indicated that they felt they were asking for a favor when requesting services from agencies. There was also concern that the staff of the agencies did not always have the skills to provide the type of services that were required, particularly counselling and mediation services.

3. Support and Opposition to The Expansion of the Jurisdiction of the Family Division, Court of Queen's Bench

Overall, judges and lawyers interviewed indicated a fairly high level of support for the expansion of the Family Division, Court of Queen's Bench. Generally it was perceived that expansion would lead to a more effective and efficient approach to dealing with family matters. There was however, some opposition to the idea of expansion. Respondents were opposed to expansion for three main reasons: the belief that the current approach was satisfactory; a negative impression of the Family Division, Court of Queen's Bench (sometimes based on a lack of information and misinformation regarding the Family Division, Court of Queen's Bench); and finally, a lack of belief or trust that the resources required to develop an effective and efficient service would be allocated to areas outside of Winnipeg. Respondents' perceptions of the advantages and disadvantages of expanding of the jurisdiction of the Family Division, Court of Queen's Bench will be discussed in more detail below.

a) Advantages of Expansion:

The major advantages of expanding of the jurisdiction of the Family Division, Court of Queen's Bench were perceived to be as follows:

-It would create uniformity of rules and procedures throughout the province.

-It is more efficient to have one court with exclusive jurisdiction for family matters than two courts with fragmented and overlapping jurisdiction.

-The status of family and child protection matters would be elevated if they were heard in the Court of Queen's Bench.

-Expansion would give all Manitobans equal access to support services.

-More consistent judgments would result if one court had exclusive jurisdiction.

-The formality of The Court of Queen's Bench and the strict adherence to rules and procedures would more effectively ensure the legal rights of the public.

-The Court of Queen's Bench provides a better quality service than does the Provincial Court.

-The efficiency of having one court hearing all family matters would decrease the operating costs of the system and therefore, benefit the public.

b) Disadvantages of Expansion:

The disadvantages of expanding the Family Division, Court of Queen's Bench, as perceived by respondents, are as follows:

-The Court of Queen's Bench is too formal and too complex to effectively and efficiently handle family and child protection matters.

-The Court of Queen's Bench lacks the flexibility necessary to efficiently deal with matters of an emergency nature. In particular, the quantity of detailed

information requested in the petition and the requirement of affidavit evidence were believed to be factors that would make the Family Division, Court of Queen's Bench relatively inaccessible for matters of an emergency nature.

-The Court of Queen's Bench has an adversarial approach that is not suitable for family and child protection matters.

-The quantity and quality of resources necessary to have an effective and efficient Family Division, Court of Queen's Bench province-wide will never be provided by the government. Manitobans living outside of Winnipeg will always be provided with second rate family court services.

Geographically, the strongest opposition to the expansion of the jurisdiction of the Family Division, Court of Queen's Bench was from respondents in Portage la Prairie. This community currently has extremely accessible court services. A Court of Queen's Bench judge resides in Portage la Prairie and the Provincial Court circuits to the community from Winnipeg. Essentially respondents argued that the service they currently have is extremely good and that expanding the jurisdiction of the Family Division, or any other type of modification to the current system, would only have a detrimental effect. This attitude was prevalent throughout the legal community in this town.

In summary, the expansion of the Family Division, Court of Queen's Bench was supported, in principle, by respondents. It is important to note however, that there was a high level of concern among respondents, even among those who were very supportive of expansion, that the structure of the Family Division, as it operates in Winnipeg, would be imposed on communities outside of Winnipeg with little or no concern for their needs. Many respondents were skeptical that certain components of the Family Division, such as pre-trials and conciliation, would work in their communities and they argued that the

structure would have to be modified to fit the needs. This attitude was based on three major factors: skepticism that sufficient resources would be allocated to ensure that the Court could provide effective and efficient services; a lack of information and misinformation regarding the Family Division and; the opinion that the cultural and geographical factors that determine the needs of Manitoban's living outside of Winnipeg differ to such an extent that differing approaches have to be used to deal with family law matters.

4. Suggested Approaches to Deal With Family Matters

Respondents were asked to discuss what they believed to be the most feasible means of improving the current approach to dealing with family matters. While the overwhelming majority of respondents agreed that the current family and child protection court system was in need of improvement, and many supported, in principle, the expansion of the Family Division, Court of Queen's Bench, there was little consensus as to how the system can best be expanded to meet the needs. The suggestions offered by respondents included:

- Give the Family Division, Court of Queen's Bench exclusive jurisdiction over all family and child protection matters province-wide.

- Give the Family Division, Court of Queen's Bench concurrent jurisdiction with the Provincial Court in family law matters that currently fall within the jurisdiction of the Provincial Court.

- Expand the jurisdiction of the Family Division, Court of Queen's Bench and appoint a Master for each major district or area.

- Implement an accessible and effective social service component with court-appointed conciliators.

- Do not change the current approach but increase the number of Court of Queen's Bench judges that reside in areas outside of Winnipeg, increase the

number of Court of Queen's Bench sittings and have regularly scheduled family dockets.

It is evident that respondents had differing opinions as to which approach would work best for the handling of family law matters. Many suggestions involved expanding the jurisdiction of the Family Division, Court of Queen's Bench but opinions differed as to whether the Family Division should assume exclusive jurisdiction or whether the Provincial Court should continue to hear family matters. The arguments in support of and opposing each of these suggested approaches will be reviewed.

a) Family Division, Court of Queen's Bench - Exclusive Jurisdiction.

Respondents who argued that the Family Division, Court of Queen's Bench should have exclusive jurisdiction for family matters stated that all Manitobans were entitled to equal access to the most effective and efficient family court services available. These respondents stated that the evident success of the Family Division, Court of Queen's Bench in Winnipeg, St. Boniface and Selkirk warranted that this service be expanded to serve all Manitobans.

Some respondents who favored exclusive jurisdiction stated that the Family Division, Court of Queen's Bench should sit in each community where the Provincial Court currently sits. Others indicated that to be efficient the Family Division, Court of Queen's Bench should sit only where the Court of Queen's Bench currently sits.

b) Family Division, Court of Queen's Bench & Provincial Court - Concurrent Jurisdiction.

Other respondents were concerned that a Family Division, Court of Queen's Bench province-wide would not be as accessible or as efficient as an approach that involved concurrent jurisdiction between the Family Division and the Provincial Court (with respect to matters that are within the jurisdiction of the Provincial Court). Some respondents indicated that the Provincial Court should have concurrent jurisdiction only with respect to family matters of an emergency nature, and others indicated that provincial judges should continue to hear family matters in those communites where the Court of Queen's Bench currently does not sit. Many respondents noted that it would be extremely inefficient to have both the Provincial Court and the Family Division, Court of Queen's Bench circuiting to each community where the Provincial Court currently sits.

The disadvantages of concurrent jurisdiction that were mentioned relate to the fact that there would still be two courts with different sets of rules and procedures dealing with family matters. Some respondents were skeptical that concurrent jurisdiction between the Family Division, Court of Queen's Bench and the Provincial Court would have much of an impact on the current approach. They indicated that as long as family law practitioners had some choice with respect to which court they wished to deal with, and as long as the Provincial Court was more accessible than the Family Division, Court of Queen's Bench, most family matters over which the Provincial Court had jurisdiction would be processed through that court.

c) Increase the Accessibility of the Court of Queen's Bench (General).

Respondents who indicated that the problems with the current approach of dealing with family matters could best be solved by increasing the accessibility of the Court of Queen's Bench, argued that family matters could not be dealt with effectively in the Court of Queen's Bench; that the Family Division, Court of Queen's Bench would be too inaccessible; and that clients could best be served when family law practitioners could choose which court was best suited to deal with a specific matter. There was concern that the expansion of the Family Division, Court of Queen's Bench would increase the amount of work involved with actually getting into court, increase the number of steps within the system (i.e. pre-trials and conciliation) and decrease the number of court sittings.

d) Issues Related to a New Approach to Dealing With Family Law Matters.

In addition to suggestions regarding new approaches to dealing with family law matters, respondents offered numerous suggestions with respect to how each of these approaches can best be implemented. This includes issues such as resident versus non-resident judges, family specialist judges versus generalist judges, conciliation services versus a broader type of social service or no social services at all. The arguments in relation to each of these issues will be summarized below.

Family Specialist Judges.

Supporting Arguments:

-Family law is a broad area and to have indepth knowledge of this area of law requires specialization.

-Specialist judges are more knowledgeable and familiar with family law and therefore, they provide better quality service than do generalist judges.

Opposing Arguments:

-Specialist judges develop tunnel vision, become too narrow in perspective, and develop too many biases.

-The position of "Family Judge" is unappealing and therefore it will be difficult to attract good candidates to this job.

-The small caseload of family matters outside of Winnipeg and Brandon does not warrant sittings by a family specialist judge.

-Judges who specialize in family matters prefer to deal with lawyers who also specialize, something that is not possible in rural areas. Specialist judges are very intimidating for generalist lawyers.

A Resident Family Division, Court of Queen's Bench Judge.

Supporting Arguments:

-A resident judge would increase the accessibility of the courts and eliminate problems associated with long delays.

-A judge who does not reside in the rural areas is unfamiliar with the culture and lifestyle.

-Judges who do not live in rural areas, particularly those who live in Winnipeg, dislike working in rural communities and this is reflected in the quality of the service they deliver.

Opposing Argument:

-The problem of accessibility would not be solved by having a resident Family Division, Court of Queen's Bench judge in the North. The rationale behind this argument pertains to the geography, difficulties of travelling in the north, and the lack of communication that exists among the legal communities in Thompson, The Pas and Flin Flon.

Respondents indicated that the area north of 53 in Manitoba is vast and that it is sometimes easier to travel to a northern community from Winnipeg than it is to travel from one northern community to another. It was argued that if there was one judge for the north, no matter where he or she was located, the remainder of the north would have very limited accessibility.

Further, lawyers and judges interviewed in each of Thompson, Flin Flon and The Pas indicated that there was a general lack of communication between members of the Bar inThompson and those in the communities of The Pas and Flin Flon. This is partially a result of geography and probably historical incidents, however, the fact is that the legal profession in the communities in each of the north-west and the north-east parts of the province communicate more with the courts in Winnipeg than they do with each other.

-There is concern that a resident judge becomes too familiar with the local lawyers and this interferes with his or her ability to be impartial.

-A resident judge would be too isolated from his or her colleagues and unable to keep up-to-date about new developments in family law. It was perceived that it would be difficult to maintain a level of consistency of

judgments throughout the province if judges were isolated from each other and from resources such a libraries.

-Judges prefer to live in Winnipeg and therefore, would not be happy living outside of the city.

-It is not practical to have a resident Family Division, Court of Queen's Bench judge reside outside of Winnipeg because of the small caseload.

-Circuiting is a tough life and circuit work should be shared among all judges, not just a few.

The Appointment of the Provincial Court Judges as Masters.

Supporting Arguments:

-Since there are so many Provincial Court judges located throughout the province, appointing them as Masters would be the most efficient approach to deal with family matters outside of the Eastern half of the province.

Opposing Arguments:

-It is unfair to ask a Provincial Court judge to do all the "dirty work" then have a Family Division, Court of Queen's Bench judge come in and serve as a rubber stamp.

Provincial Court Judges Maintain Jurisdiction Over Child Protection Matters.

Supporting Arguments:

-Provincial Court judges have extensive experience in handling Child Protection matters. Further, Provincial Court judges spend enough time in the

rural and northern communities to be very familiar with the culture and the lifestyle and this increases the quality of service provided.

Opposing Arguments:

-Child protection matters are of great importance and this should be reflected in the level of court they are heard in. The status of child protection matters can be raised by having these matters heard in a superior court.

A Resident Court of Queen's Bench Generalist Judge.

Supporting Arguments:

-Access to the Court of Queen's Bench was considered to be poor for all types of matters, not just family and child welfare matters. It was believed that a resident generalist Court of Queen's Bench judge would solve the problem of accessibility of the courts for criminal as well as civil matters. It was argued that the small caseload of family matters did not warrant that a Family Division, Court of Queen's Bench judge reside outside of Winnipeg.

Opposing Arguments:

-A generalist Court of Queen's Bench is not as knowledgeable about family and child welfare matters as a family specialist judge. As a result the quality of service would be compromised.

Social Services

Supporting Arguments:

-There is a desperate need for social services in all areas outside of Winnipeg. Social problems are dealt with as legal problems because of a lack of social services and lawyers are forced to play the role of social worker.

-Family Conciliation in Winnipeg is a successful program and all Manitobans are entitled to have access to this type of service.

-The quality of assessments is very poor and the length of time to complete them is often unreasonably long. An organized, structured system for responding to the courts need for assessments is required.

Opposing Arguments:

-It was argued that there is a form of conciliation services currently being offered by the local social workers.

5. Summary

With only a few exceptions, judges, family law practitioners and social service agencies were dissatisfied with the current approach to dealing with family law matters. Inaccessibility, inefficiency, inconsistency and insensitivity were all identified as problems with the current approach.

There was a fairly high level of support for the expansion of the Family Division, Court of Queen's Bench. It was believed that a specialist superior level court would provide better quality services than what is currently being provided by the general Court of Queen's Bench and the Provincial Court. However, opinions varied as to how the Family Division, Court of Queen's Bench should actually be expanded to best be able to respond to the needs.

Some respondents supported the concept of a province-wide Family Division, Court of Queen's Bench with exclusive jurisdiction to deal with family and child protection matters. Others indicated that a more efficient approach would involve concurrent jurisdiction between the Family Division, Court of Queen's Bench and the Provincial Court, in family law matters that fall within the jurisdiction of the Provincial Court.

It is significant to note that the overwhelming majority of judges and family law practitioners stressed the urgent need for social services. The development of an organized, accessible, high quality social services program was strongly recommended. The quality of services provided to the public and the efficiency of the courts would be greatly improved, it was generally maintained, by the expansion of Family Conciliation. Many respondents stated that they would not be receptive to the expansion of the Family Division, Court of Queen's Bench unless it was accompanied by a social service component.

Based on the opinions of judges and family law practitioners (outside of the Eastern half of the province), the preferred approaches to deal with family law matters can be summarized as follows:

1. <u>The Family Division, Court of Queen's Bench assumes exclusive jurisdiction over all family matters.</u>

Having a Family Division, Court of Queen's Bench with exclusive jurisdiction for family law matters province-wide was considered to be the "ideal" approach from the perspective of "quality of service", but only if adequate resources were allocated to make the system efficient and effective. That is, the concept of a unified family court was supported in principle, however, there was skepticism that the number of sittings and the accessibility of social services would be adequate. Some suggested that the appointment of Masters in rural

areas would solve the problem of accessibility. Others suggested that having judges of the Family Division, Court of Queen's Bench reside in various communities outside of Winnipeg would be a feasible means of expanding the Family Division, Court of Queen's Bench and ensuring adequate accessibility. Support for this approach was based on the perception that a superior quality of service would be offered to that currently being provided. It was also mentioned that exclusive jurisdiction is preferable to concurrent jurisdiction between the Family Division and the Provincial Court because judges and masters of the Court of Queen's Bench have jurisdiction to grant interim orders of exclusive occupancy of the family home whereas judges of the Provincial Court do not. It was perceived that there was a great need for an accessible court that has the jurisdiction to grant orders regarding exclusive occupancy of the family home.

Exclusive jurisdiction was particularly favored by family law practitioners in each of Brandon and Dauphin, providing a Family Division, Court of Queen's Bench judge resides in each these communities. Respondents in The Pas indicated that this approach is most attractive if it involves the use of masters. It was suggested that Provincial Court judges or some other person(s) should perform the duties of a master and that the Family Division should circuit from Winnipeg.

2. Concurrent Jurisdiction Between the Provincial Court and the Family Division, Court of Queen's Bench

Concurrent jurisdiction between the Family Division, Court of Queen's Bench and the Provincial Court, with respect to family law matters currently within the jurisdiction of the Provincial Court, was considered to be an efficient means of dealing with family law matters. It was apparent that the Family Division, Court of Queen's Bench, complete with support services, was believed

to be the most effective court to handle family matters. Concerns about the accessibility of the court and the inefficiency of having two separate courts on circuit (Family Division, Court of Queen's Bench and the Provincial Court) were the key factors on which respondents based their support for concurrent jurisdiction.

Opinions regarding how concurrent jurisdiction should be implemented varied. Some respondents stated that the Provincial Court should have jurisdiction to hear only family law and child protection matters of an emergency nature, such as motions for interim or exparte orders. Others stated that the Provincial Court should continue to hear all family law and child protection matters in communities where the Court of Queen's Bench currently does not sit. Still others thought that the Provincial Court should have concurrent jurisdiction for child protection matters only.

While this approach was fairly well supported throughout the province, some respondents were concerned that it would not provide for a "unified family court", and would therefore, be susceptible to the problems inherent to the current approach. The major concern regarding this approach centered around a lack of uniformity of rules and procedures throughout the province.

III RESULTS:

Perceptions and Attitudes Toward the Family Division of the Court of Queen's Bench

1. Introduction

This section of the report reviews the results pertaining to the perceived strengths and weaknesses of the Family Division of the Court of Queen's Bench. This information was gathered from Winnipeg family law practitioners, lawyers who act for Child and Family Service Agencies in child protection matters, and the judges and master of the Family Division of the Court of Queen's Bench. The nature of the information gathered related to respondents' opinions of the concept of a "unified family court", overall satisfaction with the Family Division of the Court of Queen's Bench, and the perceived strengths and weaknesses of appearances before the referee, pre-trial conferences, the Deputy Registrar's Office and Family Conciliation. Information was also gathered on the perceived need for other types of services currently not offered by the Family Division. The issue of the expansion of the Family Division was also discussed with the judges and the master of this court.

The findings from the survey of family law practitioners will be summarized in the following section. A discussion of the results of the interviews with the judges and master of the Family Division of the Court of Queen's Bench will follow.

2. Winnipeg Family Law Practitioners: Attitudes Toward the Family Division

Lawyers in Winnipeg who were identified as having fairly substantive family law practices, or who act for Child and Family Service Agencies were mailed a questionnaire that contained a series of questions on the Family Division. Thirty-eight of the 65 questionnaires mailed out were returned (58%). The small size of this sample does not provide for statistically reliable findings, but it will provide an indication of the "direction" of family law practitioners' opinions on the issues covered in the questionnaire. It cannot be concluded, however that these data represent the opinions of all lawyers practicing family law in Winnipeg.

Of the 38 practitioners who responded to this survey, 20 had practiced family law in Winnipeg for 8 or more years, 10 had practiced for 4 to 7 years and 7 had practiced for 3 years or less. With respect to the proportion of their practice that involved family matters, 8 respondents indicated that 50 percent or less of their practice involves family matters, 11 respondents indicated that their practice was comprised of 50 to 75 percent family matters and 18 respondents indicated that their practice was comprised of 80 percent or more family law matters.

The findings from this survey will be reported by major topic area. Responses to questions were analyzed in terms of the number of years respondents had practiced family law in Winnipeg and the proportion of their practice that involved family matters. Variation in responses to questions with respect to these two items will be noted throughout this summary of the findings.

TABLE 1

Attitudes Regarding the "Unified Family Court" Concept.
(n = 38)

	Strongly Agree	Agree	Disagree	Strongly Disagree	Undecided	Not Stated
Exclusive Jurisdiction:						
Families are best served when one court has jurisdiction over family matters	29	7	1	0	1	0
Specialist Judges:						
Family matters are best handled by judges who deal exclusively with family matters.	16	16	5	1	2	0
In my experience, generalist judges handle family matters effectively.	1	13	15	2	7	0
Judges who hear family matters should receive special training in family law.	21	14	2	0	1	0
Adversarial Approach:						
The adversarial approach is inappropriate for the resolution of family disputes.	7	10	14	1	3	3
The procedures of the Family Division, Court of Queen's Bench reduce the adversary aspects of family disputes.	4	16	11	2	5	0

a) The Unified Family Court Concept:

The unified family court concept is perceived very favorably by family law practitioners. When asked if, in their opinion, families are best served when one court has jurisdiction over family matters, 36 of the 38 respondents agreed that they were (29 strongly agreed and a further 7 agreed). Of the remaining respondents, 1 disagreed and 1 was undecided (Table 1).

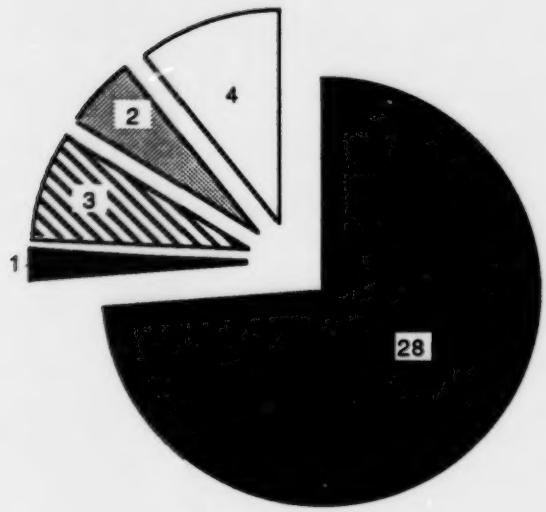
Judges who deal exclusively with family matters were recommended by the Law Reform Commission of Canada in the proposal regarding the unified family court model. Family law practitioners responding to the survey agreed that family matters are best handled by judges who deal exclusively with family matters (16 strongly agreed and 16 agreed). While most respondents supported the concept of family specialist judges, there was a lack of consensus regarding the effectiveness of generalist judges in dealing with family matters. Fourteen respondents indicated that generalist judges handle family matters effectively and 17 indicated that they did not handle family matters effectively. Seven respondents were undecided.

The final item with respect to judges who deal with family matters pertained to training. When respondents were asked if judges who hear family matters should receive special training in family law, the overwhelming majority (n=35) agreed.

One of the objectives of a unified family court is to reduce the adversarial approach to the resolution of family disputes. There was a lack of consensus among respondents regarding the appropriateness of this objective. Seventeen respondents agreed that the adversarial approach is inapproapriate for the resolution of family disputes, 17 disagreed, 3 were undecided and 3 did not respond to the question. There was also a lack of consensus as to whether the procedures of the Family Division, Court of Queen's Bench reduce the

TABLE 2

Opinions of the Best Approach to Family Matters



LEGEND

- Family Division
- Former approach (Concurrent jurisdiction between Prov. Crt. & Q.B.)
- Both approaches equally good
- Undecided
- Did not practice prior to the Family Division, Q. B.

adversary aspects of family disputes. Twenty respondents indicated that the adversary aspects were reduced, 13 indicated that they were not and 5 were undecided.

b) The Family Division, Court of Queen's Bench:

To get an overall measure of respondents' opinions regarding the Family Division, questions were included that asked respondents to compare the Family Division to the former approach and to rate their overall level of satisfaction with the Family Division and each of its major components. More specific questions measured respondents' opinions regarding the accessibility of the Family Division, the scheduling of hearings, and the cost involved to clients to have matters heard in the Family Division. The findings relating to these questions will be discussed in this section.

The Family Division was perceived to be a better approach to dealing with family matters than the previous approach which involved concurrent jurisdiction between the Provincial Court and the Court of Queen's Bench (Table 2). The Family Division was perceived to be a more efficient, streamlined approach that provides less confusing, more effective services than the former system (Table 2.1 in Appendix A). Only 1 respondent indicated that the former approach was superior to the Family Division. Preference for the former system was based on the belief that applications could be processed quicker, the system was less formal, and that the greater number of judges prevented judge shopping (Table 2.1 in Appendix A).

Respondents not only perceived the Family Division to be better than the former approach, but they also indicated a fairly high level of satisfaction with the Family Division. The majority of respondents indicated that they were either very satisfied or satisfied with the Family Division (n=30) (Table 3). This does

TABLE 3

Overall Level of Satisfaction With the Family Division,
Court of Queen's Bench and The Services Provided by This Court

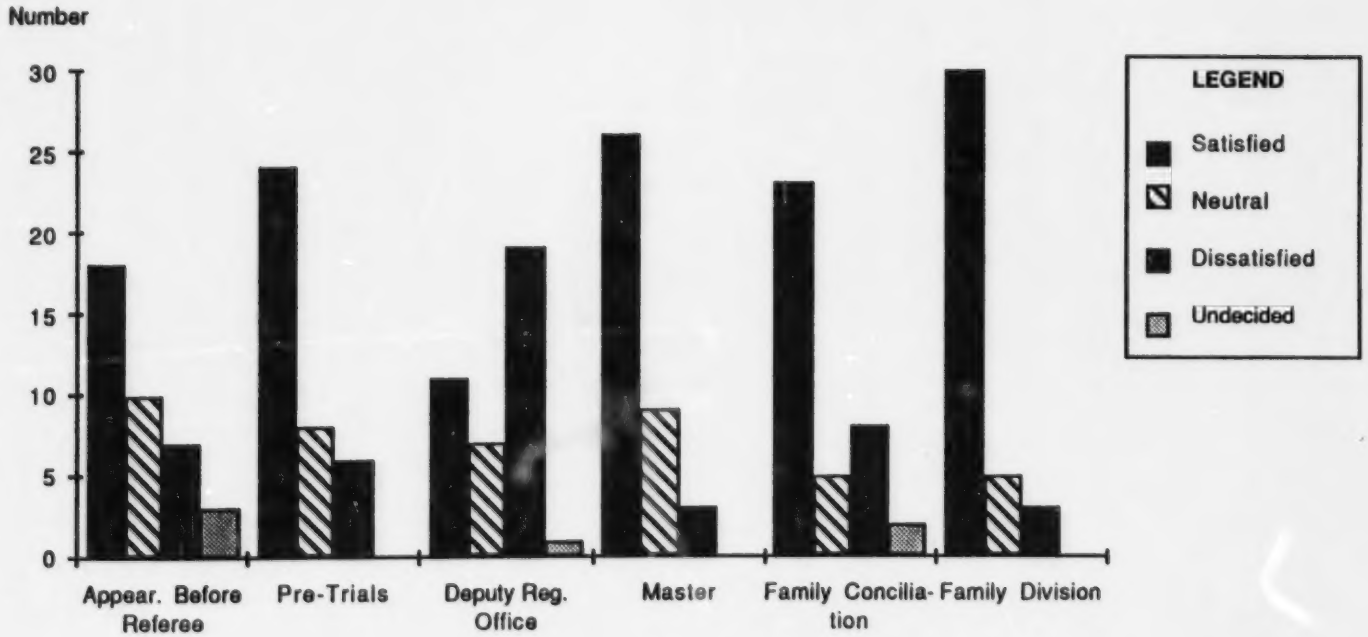
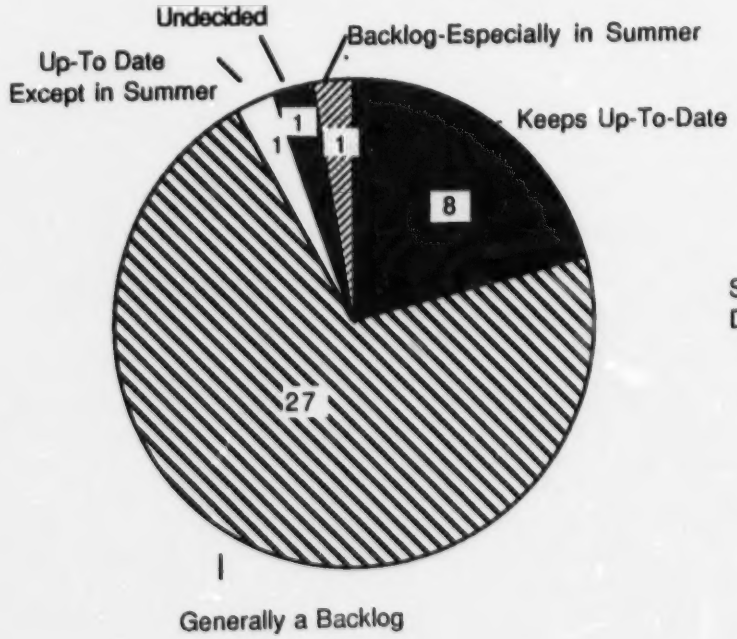


TABLE 4

Accessibility of the Family Division, Court of Queen's Bench

"Would you say that the Family Division, Court of Queen's Bench generally keeps up-to-date in processing court orders or is there generally a backlog of cases?"



"The accessibility of the Family Division during the summer months in adequate."

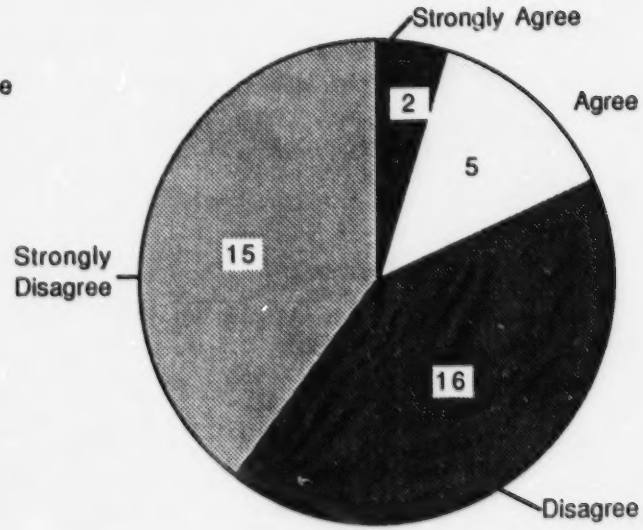


TABLE 5

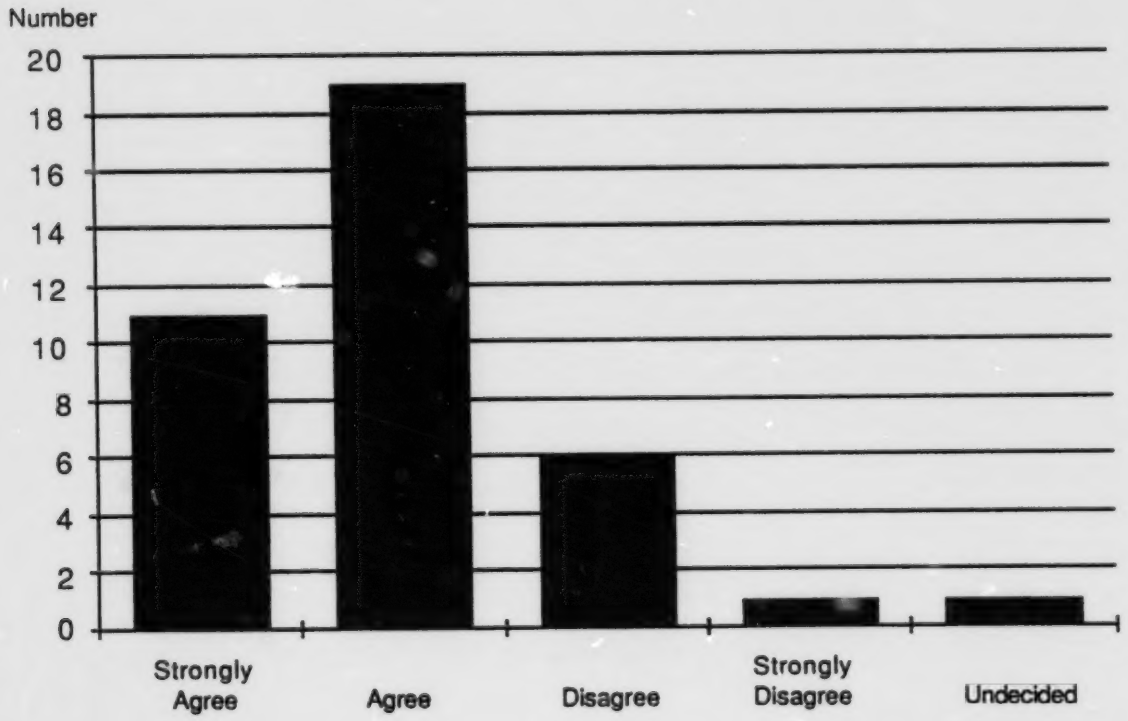
Opinions Regarding the Scheduling of Hearings
(n = 38)

	Excellent	Good	Fair	Poor	Undecided	Not Stated
APPEARANCES BEFORE THE REFEREE:						
- Scheduling of appearances before referee	4	18	10	4	2	0
- Length of time Counsel waits for appearances before referee	3	4	8	16	2	5
- Length of time Clients wait for appearances before referee	2	5	5	16	6	4
MOTIONS:						
- Scheduling of motions	1	15	14	8	0	0
- Length of time Counsel waits for motions	2	9	9	13	0	5
- Length of time Clients waits for motions	2	10	8	9	4	5
PRETRIALS:						
- Scheduling of pretrials	5	15	10	8	0	0
- Length of time Counsel waits for pretrials	0	3	8	22	0	0
- Length of time Clients wait for pretrials	0	1	6	23	3	0
TRIALS:						
- Scheduling of trials	11	19	6	1	1	0
- Length of time Counsel waits for trial dates	4	11	8	5	6	4
- Length of time Clients wait for trial dates	5	7	6	6	7	7

TABLE 6

Cost to Clients

"It is expensive for my clients to have matters heard in the Family Division of the Court of Queen's Bench"



not suggest, however, that respondents are equally satisfied with all aspects of the Family Division. Those components rated most favorably were: the master, pre-trials and Family Conciliation. The area that respondents were most dissatisfied with was the Deputy Registrar's Office. Respondents opinions with respect to each of the major components of the Family Division will be discussed in more detail in sections c to f.

A further aspect of the Family Division that respondents were critical of was the level of accessibility. It was generally perceived that the Family Division has a backlog of cases, particularly during the summer months (Table 4).

Related to the issue of accessibility is the scheduling of hearings. Respondents were very critical of the length of time they spend waiting for pre-trials, motions and appearances before the referee (Table 5). Delays in the hearing of pre-trials was an area that was of particular concern to respondents. Similarly, many respondents were critical of the length of time both counsel and clients wait for appearances before the referee, and the length of time counsel waits for the hearing of motions. In contrast, respondents' had fairly positive opinions regarding the scheduling of trials.

The final issue that will be discussed in this section pertains to the cost to clients of having matters heard in the Family Division. The findings indicate that most respondents indicated that it is expensive for clients to have matters heard by the Family Division (n=30). While cost to clients may be an issue of concern to practitioners, it should be recognized that respondents were not asked whether they thought this cost could be reduced without affecting the quality of service, nor were they asked to compare the costs of having matters heard in the Family Division with some other system.

TABLE 7

Opinions Regarding Appearances Before the Referee
(n=38)

	Strongly Agree	Agree	Disagree	Strongly Disagree	Undecided	Not Stated
Appearances before the referee are effective in saving court time	5	16	9	4	2	2
Appearances before the referee do not encourage or facilitate settlement	4	13	14	3	2	2
In theory, appearances before the referee are a good idea	8	20	3	3	3	1
Appearances before the referee should not be mandatory	10	10	8	4	4	2
The Master should receive special training in the skills required to conduct effective appearances	10	19	3	0	5	1
The Master should not be involved with custody matters	9	16	10	1	2	0
The Master should be involved in marital property valuations	16	19	2	1	0	0
A Master who deals exclusively with family matters is most effective in family court	20	14	4	0	0	0
Masters who hear family matters should receive special training in family law	23	13	0	0	2	0

c) The Master/Referee[1]

The role of the Master was fairly well supported in principle. There was, however, a lack of consensus regarding the effectiveness of the appearances before the referee (Table 7). Approximately one-half of respondents (n=21) indicated that appearances before the referee are effective in saving court time and that such appearances encourage or facilitate settlement (n=17). A further issue with respect to appearances before the referee is the fact that they are mandatory. Many respondents (n=20) disagreed with mandatory appearances before the referee and 12 agreed.

Questions were also included regarding the role of the master. The overwhelming majority of respondents (n=34) agreed that a master who deals exclusively with family matters is most effective in family court . Respondents also felt strongly that a master who hears family matters should receive special training in family law (n=36). With respect to the responsibilities of the master, respondents agreed that the master should be involved with marital property valuations; however, there was resistance to the master's involvement in custody matters (25 respondents disagreed with the master's involvement in custody matters and 11 agreed).

Respondents were also asked to comment on what they perceived to be the strengths and weaknesses of appearances before the referee. The major strengths mentioned centered around efficiency and quality of hearings. The most frequent responses to this question were that appearances before the referee kept cases progressing by addressing details such as the the ordering of home study reports, financial disclosure, etc. (n=7), and that a large volume of

[1]The terms Master and Referee are used interchangeably in this report although technically the powers and jurisdiction of these roles do differ. See discussions in the Glossary under "Master". It should also be noted that a Deputy Registrar is responsible for "motions court", a function carried out by a Master/Referee prior to the establishment of the Family Division, Court of Queen's Bench. This is discussed in more detail in the Glossary under "Deputy Registrar".

TABLE 8

Opinions Regarding Pretrials
(n = 38)

	Strongly Agree	Agree	Disagree	Strongly Disagree	Undecided
Pretrials are effective in saving court time.	19	14	3	1	1
Pretrials do not encourage or facilitate settlement	0	3	17	17	1
Some judges are much more effective than others in using pretrials to facilitate settlement	24	13	1	0	0
Judges require special training to conduct pretrials effectively	21	13	0	0	4
Pretrials should not be mandatory	4	3	12	19	0

cases can be dealt with relatively expeditiously (n=6). Good hearings and generous consideration to issues (n=4), informality (n=3), the facilitation of negotiations (n=3), saving court time (n=2), demonstrating to clients the fact that the courts take their problems seriously (n=2), and the master herself (n=2) were also mentioned as strengths of appearances before the referee.

The major weaknesses of appearances before the referee, as perceived by respondents, centered around issues related to delays and the sheduling of hearings, and the limited jurisdiction of the master. A substantial number of respondents (n=10) complained that appearances before the referee or master frequently involve unreasonable time delays. Some respondents attributed the delays to the master's heavy work load (n=4). It was also indicated that delays contribute to an unnecessarily high cost to clients' (n=3). A further weakness that was mentioned quite frequently was that appearances before the referee were unnecessary in many cases and that they served only to increase clients legal fees (n=8). It was also indicated that the master does not have enough power or jurisdiction (n=6).

d) Pre-trial Conferences[2]

Pre-trials were perceived to be an effective procedure to deal with the resolution of family disputes. Most respondents stated that pre-trials are effective in saving court time (n=33), and that they encourage or facilitate settlement (n=34) . Respondents also indicated that they supported the idea of mandatory pre-trials (n=31).

The abilities of judges to effectively use pre-trials to promote settlement was perceived to vary (n=37). The majority of respondents (n=34) also indicated that judges require special training to conduct pre-trials effectively.

[2] A brief description of "Pre-trial Conferences" can be found in the Glossary of this report.

TABLE 9

Ratings of the Deputy Registrar's Office
(n = 38)

	Excellent	Good	Fair	Poor	Undecided
Speed of Service	2	10	16	10	0
Quality of Service	2	16	7	12	1
Responsiveness to Counsels' Needs	3	9	15	11	0
Efficiency in managing files	1	12	18	7	0
Providing advice	2	15	7	12	2
Notifying the legal profession of Practice Directives or new policies for filing documents	0	7	5	25	1

The findings from the rating scale reflect the responses to the more general questions on the strengths and weaknesses of pre-trials. The strengths most frequently mentioned were that pre-trials promote settlement (with the right judge) (n=23), that they help clients to evaluate their position (n=10), and that they narrow the issues and force clients and counsel to deal with the actual issues (n=10) (Detailed findings are presented in Appendix A).

Scheduling was identified as a major weakness of the pre-trial procedure (n=16). An appointment system for pre-trials was recommended by some respondents. Other weaknesses mentioned include the differing abilities of judges to conduct pre-trials (n=6), the fact that untested evidence is used (n=4), that some judges are not aggressive enough in pointing out unreasonable positions (n=4) and that some judges push too hard for settlement (n=3).

e) Deputy Registrar's Office[3]

It was reported earlier that of all the components of the Family Division, respondents were least satisfied with the Deputy Registrar's Office. This dissatisfaction is centered on the inconsistency of services provided by clerks, poor communication regarding Practice Directions, and what was perceived to be a poor attitude on the part of the staff.

Respondents were asked to rate the Deputy Registrar's Office on a series of items related to the effectiveness and efficiency of service. The findings are presented in Table 9. The area that received the poorest ratings was notifying the legal profession of Practice Directives or new policies for the filing of documents (n=25). Efficiency in managing files, responsiveness to counsels' needs and speed of service were also areas that most respondents rated as

[3]This term is used in this report to refer to the registry function of the Court Operation. This is discussed in more detail in the Glossary.

TABLE 10

Opinions Regarding Specific Issues Pertaining to Family Conciliation
(n = 38)

	Strongly Agree	Agree	Disagree	Strongly Disagree	Undecided	Not Stated
a) It is my opinion, as a lawyer, that Family Conciliation provides a very important service.	19	14	2	0	1	2
b) As far as I know, most of my clients who go to Family Conciliation find that this service does not help them.	0	3	22	11	0	2
c) The conciliators at Family Conciliation have excellent skills.	4	14	7	3	7	3
d) There is a great deal of consistency in the service delivery techniques or procedures followed by conciliators.	1	8	10	4	12	3
e) Some conciliators have strong biases that interfere with their ability to be as objective as they should be.	6	8	12	2	6	4
f) Conciliators should meet with both clients separately in the initial meeting.	9	13	1	2	11	2
g) Often the quality of Home Study Assessments completed by Family Conciliation is very poor.	3	8	17	2	5	3
h) I am satisfied with the length of time required for Family Conciliation to complete a Home Study Assessment.	1	7	9	18	1	2
i) Family Conciliation does not have enough staff to provide timely mediation services.	10	17	4	0	5	2

either "fair" or "poor". Opinions regarding the quality of service and providing advice varied. Approximately one-half of respondents gave these items either excellent or good ratings.

Responses to the questions regarding the strengths and weaknesses of the Deputy Registrar's Office coincide with the findings discussed above (Tables 9.1 to 9.3 in Appendix A). The strengths most frequently mentioned relate to the service provided by the staff. A fairly large number of respondents gave general comments about the friendly, courteous service provided by some staff (n=12), and about the staffs' abilities (i.e. "generally knowledgeable", "good in emergency situations"). There were also a fair number of compliments regarding the service provided by specific staff (i.e. the motion and trial coordinators).

With respect to weaknesses, inconsistency between clerks (n=20), poor communication of changes in Practice Directions (n=11), a poor attitude (n=9) and a lack of interest and motivation on the part of some staff (n=14) were mentioned most frequently. There were also a fair number of comments regarding slow service and poor counter service. Some respondents indicated that clerks are ill informed about policy or rules (n=6), and that they applied procedural rules in a slavish and mechanical manner (n=3).

f) Family Conciliation[4]

Family Conciliation was perceived to be providing an important service and with the exception of only a few respondents, the service provided by Family Conciliation was believed to be of great assistance to clients (n=33) (Table 10).

[4]A summary of the services provided by this program can be found in the Glossary.

TABLE 11

Other Services that Lawyers feel could be offered by the Family Division, Court of Queen's Bench

	Number*
Accounting Services/help with valuations and appraisals/ financial mediation	6
Trained staff to supervise and facilitate access (where there is estrangement between parent and child)	2
Trained staff to deal with child abuse	1
Open mediation	1
Uniformity of maintenance	1
Mediation of all issues, not just custody and access	1
Enforcement of access	1
Lawyer mediation	1
Psychological Services	1
Non-binding arbitration	1
Adult and child adjustment to separation (perceived to be unavailable at present)	1
No other services	10
Undecided	12
No answer	3
	(38)

* Some respondents suggested more than one type of service. As a result the total number of responses is greater than the number of respondents.

The major area that respondents expressed dissatisfaction with centered around time delays. Approximately three-quarters of respondents agreed that the length of time required to complete a Home Study Assessment was unsatisfactory and that Family Conciliation does not have enough staff to provide timely mediation services.

Concern was also expressed regarding the skills of the staff and the consistency of service. When asked about the skills of the conciliators, only one-half of respondents (n=18) stated that they would rate these skills as excellent. Inconsistency in techniques and procedures was believed to be a problem by a substantial number of respondents (n=14), as was strong biases on the part of some conciliators (n=14).

The major strengths of Family Conciliation were believed to be mediation service (n=8), the non-threatening conciliatory attitude (n=8) and the fact that this service is provided free of charge to clients (n=7). The quality of service was also mentioned as a strength (Tables 10.1 to 10.3 in Appendix A).

Consistent with the findings from the rating scales, the weaknesses of Family Conciliation centered around time delays and a perceived shortage of staff. Some respondents also expressed concern that some staff have biases, particularly with respect to joint custody, that lead them to pressure clients into accepting arrangements that are not viable for their situation (n=6). A further weakness that was mentioned pertained to the abilities of the staff. It was indicated that some staff were poorly qualified and provided ineffective service (n=5).

g) Perceived Need for Other Types of Services

Respondents were asked whether there were other types of services that could be offered by the Family Division (Table 11). Of the 13 respondents who

indicated that there were other services that could be offered, accounting services and assistance with valuations was mentioned most frequently (n=6). Services related to access orders and child abuse were also mentioned. It should be noted that 10 respondents indicated that there were not any other type of service that should be offered by the Family Division and a further 12 respondents were undecided.

3. Judges and The Master of the Family Division, Court of Queen's Bench: Attitudes Toward the Family Division

Personal interviews were conducted with the judges and the master of the Family Division of the Court of Queen's Bench in order to determine their opinions regarding the effectiveness of the Family Division, its strengths and weaknesses, as well as their opinions regarding the expansion of this court. The results of these interviews will be discussed in this section.

Overall it was perceived that the Family Division is adequately meeting the objectives of a unified family court as outlined by the Law Reform Commission of Canada. The Family Division was deemed to be accessible and the procedures were perceived to reduce the adversarial apects of family disputes, and to reduce pain, bitterness and confusion on the part of clients as much as possible.

Pre-trials were attributed, to a large extent, with the success of the Family Division in meeting its goals. Most respondents indicated that, to the best of their knowledge, pre-trials were effective in promoting settlement, in reducing delays and inconveniences, and in reducing the pain and bitterness of clients. It was generally agreed that pre-trial briefs were an important tool as they gave judges the opportunity to become informed about the case. Judges were also

very well informed regarding counsels' complaints about the length of time they and their clients spend waiting for the pre-trial conference. It was evident that this was of concern to judges as they were aware that clients were billed for this waiting time. It was acknowledged that the courts may have to compromise and and try a new scheduling system with respect to pre-trials.

Judges currently do not receive formal training in the skills necessary to conduct effective pre-trials, and it was generally agreed that an organized training program on mediation skills would be extremely beneficial.

Family Conciliation was perceived to be a very vital component of the Family Division and it was agreed that the quality of service being provided is of high quality. Respondents stressed the importance of having extremely well qualified staff working for Family Conciliation, and a few expressed concern that the standards have started to deteriorate, or that they may deteriorate over time. Concern was also expressed regarding the amount of pressure that mediators place on clients. Specifically, it was perceived that during the mediation process some workers put too much pressure on some clients to accept a situation that is not viable for them.

The role of the Master was deemed to be essential to the efficient operation of the Family Division and there was consensus that the Master is currently overworked. Most respondents indicated that the current responsibilities of the Master are appropriate. There was a suggestion that these responsibilities could be expanded to include the hearing of interim custody and maintenance orders and the signing of consent orders for accounting. It was further indicated that currently maintenance enforcement proceedings are heard by a master and motions to vary maintenance orders are heard by a judge. It was suggested that if both of these functions were

conducted at the same hearing it would save time and reduce confusion on the part of clients.

Respondents also had some suggestions with respect to some additional services that could be either part of the Family Division, Family Conciliation or some other body. These services related to the provision of support or assistance for parties (moral support) after the court process is complete, and the facilitation of access in cases where the access parent is unsure of his or her role. It was generally perceived that there is not a need for an accounting component or service to be attached to the court.

Overall, judges and the master of the Family Division are satisfied with their role and responsibilities. It was suggested that judges should be rotated after a certain period of time to avoid the problems associated with tunnel vision and stagnation.

Finally, the judges of the Family Division support the expansion of the court to those areas of the province currently not under its jurisdiction. It was suggested that in theory, concurrent jurisdiction between the Provincial Court and the Family Division would be the most feasible means of expanding the court. It was indicated that the processes employed by the Family Division are viable in an urban setting because of the high case load. There was concern that these same processes would not work as effectively or as efficiently in a rural setting because of the limited accessibility of the court. There was consensus that the support services provided by Family Conciliation would have to be expanded simultaneously with the expansion of the court.

4. Summary

Overall the Family Division of the Court of Queen's Bench was perceived to be an effective approach to deal with the resolution of family disputes. Family law practitioners, the judges and the master of the Family Division supported the "unified family court" concept and they maintained that this approach is superior to the former approach that involved concurrent jurisdiction between The Court of Queen's Bench and the Provincial Court. It was believed that the Family Division provides a more efficient, streamlined service that is less confusing for clients. The concept of family specialist judges and masters, or judges and masters who deal exclusively with family matters, was also supported.

In general family law practitioners were fairly satisfied with the role of the master, pre-trial conferences and Family Conciliation. The role of the master was indicated to be an efficient means of keeping cases moving (i.e. getting assessments ordered, valuations etc.) and the quality of hearings provided was considered to be extremely good. The effectiveness of pre-trials was rated quite highly, but there were complaints about backlogs and scheduling problems. Family Conciliation was believed to be providing an important service that is helpful for most clients. However, time delays with respect to assessments and mediation were believed to be a serious problem. Other criticisms of Family Conciliation centered around the skills of the conciliators and inconsistency in the techniques and procedures used.

While overall the Family Division was considered to be an excellent court, there were complaints about time delays, scheduling, the registry function of the Deputy Registrar's Office and the cost to clients. With respect to scheduling, most respondents perceived that the Family Division is generally

backlogged, and the accessibility of the court during the summer months was considered to be unsatisfactory. Concern was also expressed about the length of time counsel and clients have to wait for appearances before the referee, the hearing of motions, and for pre-trial conferences. Both counsel and judges indicated that pre-trials are currently scheduled for the convenience of the court, not counsel and clients, and it was conceded that some compromise was necessary as waiting time served to inflate clients' legal fees.

The weakest aspect of the Family Division was believed to be the registry function of the Deputy Registrar's Office. It was stated that the staff provide very inconsistent service, that some had a poor attitude and lacked motivation toward their job, and that they failed to adequately communicate changes in Practice Directives or new policies for the filing of documents to the legal profession. On the more positive side, it was indicated that this office did a fairly good job in providing advice, and that some staff were extremely competent and courteous.

Finally, the judges of the Family Division of The Court of Queen's Bench were very supportive of the expansion of this court. It was generally agreed that the most efficient means of expanding the court, in theory, would be to maintain the involvement of the Provincial Court. This approach would provide accessible service and avoid the necessity of having two courts travelling to the many small communities currently serviced by the Provincial Court.

Table 12

Number of Files Reviewed and Actual Numbers of Files and Applications For the Study Window (July 1, 1984 to June 30, 1985) By Court

Courts	Court of Queen's Bench (Divorce and F.M.A.)			Provincial Court (F.M.A)			Child Protection		
	# of Files Reviewed	Actual # of Files	Actual # of Petitions	# of Files Reviewed	Actual # of Files (1)	Actual # of Applications	# of Files Reviewed	Actual # of Files	Actual # of Applications
Winnipeg	595	3925	3868	0	0	0	423	895	1200**
Brandon	152	408	408	89	228	349	122	68	361
Dauphin	43*	53*	100	33	58**	33**	43	43	70
Portage	60	60	60	26	26	26	47	47	50**
St. Boniface	87	87	87	0	0	0	46	46	46**
Steinbach	0	0	0	2	2	2	3	3	3
Selkirk	26	26	26	0	0	0	9	9	9
Swan River	16	16	16	3	3	12	27	27	88
The Pas	32*	49	49	49	65	65	114	140	194
Flin Flon	0	29	29	12	19	12	21	21	21**
Thompson	94	94	94	86	86	126	191	191	360
	1105	4747	4737	300	487	625	1046	1490	2402

(1) Includes the number of R.E.M.O.'s and orders transferred in from Q.B. for the enforcement of maintenance only. The number of each of these by court is as follows:

R.E.M.O.: Brandon - 25, Dauphin - 4, Swan River - 1, The Pas - 1, Flin Flon - 1.
Maintenance Enforcement: Brandon - 64, Dauphin - 21, Swan River - 8, The Pas - 15, Flin Flon - 6.

* Denotes divorce petitions only.
** Estimate only.

IV RESULTS:

Family and Child Protection Matters - Court Caseload Data

1. Introduction

The final component of this study involved the collection of caseload data throughout the province on family and child protection matters. These data were collected by reviewing files in both the Court of Queen's Bench and the Provincial Court. Information on applications and petitions filed between July 1, 1984 and June 31, 1985 were gathered. A total of 2,451 files were reviewed (1,150 Court of Queen's Bench files, 300 Provincial Court files and 1,046 Child Protection files). In most administrative and judicial centers, all petitions and applications filed within the study window were reviewed. In Winnipeg and Brandon however, a systematic sampling procedure was used because of the large volume of files. Details regarding the number of files reviewed and the actual number of applications and petitions filed in each judicial and administrative center are presented in Table 12.

While a tremendous amount of caseload data was collected, time constraints and the complexities involved in collecting data of this nature did not provide for the collection of an exhaustive data set. As a result, some key pieces of information are not available and it is therefore not possible to provide a complete description of family and child protection information. For example, information was not collected on the number of family and child protection dockets, or the number of family and child protection matters that are included on criminal dockets. It is important to keep these shortcomings in mind when reviewing these findings. It is also noteworthy that this data set represents the first attempt that has ever been made to provide statistical information on family and child protection matters dealt with by the courts in Manitoba.

TABLE 13

The Number of Petitions and Applications Filed Pertaining to Family and Child Protection Matters by Administrative/Judicial Center (July 1, 1984 to June 30, 1985)

Administrative/Judicial Center	Court of Q.B. (Excluding Child Protection)	Provincial Court (FMA)	Child Protection	Total
Winnipeg	82% (3868)	0	50% (1200)**	65% (5068)
Brandon	9% (408)	56% (349)	15% (361)	14% (1118)
Dauphin	2% (100)	5% (33)**	3% (70)	3% (203)
Portage	1% (60)	4% (26)	2% (50)**	2% (136)
St. Boniface	2% (87)**	0	2% (46)**	2% (133)
Steinbach	0	* (2)	* (3)	* (5)
Selkirk	* (26)	0	* (9)	* (35)
Swan River	* (16)**	2% (12)	4% (88)	1% (116)
The Pas	1% (49)	11% (65)	8% (194)	4% (308)
Flin Flon	1% (29)	2% (12)	1% (21)**	1% (62)
Thompson	2% (94)	20% (126)	15% (360)	8% (580)
	100%	100%	100%	100%
	(4737)	(625)	(2402)	(7764)
Percent of Total:	61%	8%	31%	

* Denotes less than 1%
** Denotes an estimate

2. Summary of Caseload Data

a) Number of Petitions and Applications Filed in Each Judicial and Administrative center:

A total of 65 percent of all family and child protection matters in Manitoba are dealt with by the Family Division of the Court of Queen's Bench in Winnipeg (Table 13). Brandon has the second highest caseload in the province at 14 percent and Thompson has the third highest (8%). The North as a whole (Thompson, Flin Flon and The Pas) handles 13 percent of all family and child protection matters in the province.

Child protection matters represent 31 percent of all family matters dealt with throughout the province. Fifty percent of all Child Protection matters in the province are dealt with by the court in Winnipeg. Brandon and Thompson each handle 15 percent of the total Child Protection caseload for the province. The North (Thompson, Flin Flon and The Pas) handles approximately one quarter (24%) of all Child Protection matters.

Family matters dealt with by the Provincial Court, excluding Child Protection matters, account for only 8% of all family matters dealt with by the courts throughout the province. The majority of these matters (56%) are dealt with by the court in Brandon and a further 33 percent are dealt with by the court in Thompson, The Pas and Flin Flon (20%, 11% and 2% respectively).

b) Residence of Parties Involved in Family Matters:

The residence of the parties involved in family matters (excluding Child Protection) were recorded and analyzed in terms of whether both parties, one party or neither parties actually resided in the administrative or judicial center in

Table 14

Residence* of Petitioner/Applicant and Respondent

Administrative & Judicial Centers	Court of Queen's Bench (Divorce and F.M.A.)					Provincial Court (F.M.A Only)				
	Both Parties Reside in Center	Only Petitioner Resides in Center	Only Respondent Resides in Center	Neither Parties Reside in Center	Sample Size	Both Parties Reside in Center	Only Applicant Resides in Center	Only Respondent Resides in Center	Neither Parties Reside in Center	Sample Size
Winnipeg	65%	24%	5%	5%	595					0
Brandon	35%	25%	8%	31%	152	41%	27%	7%	25%	89
Dauphin	21%	40%	9%	30%	43	15%	30%	3%	52%	33
Portage	25%	25%	5%	42%	60	23%	54%	4%	19%	26
St. Boniface	63%	28%	2%	7%	87					0
Steinbach					0	0	0	0	100%	2
Selkirk	15%	27%	4%	50%	26					0
Swan River	19%	25%	12%	44%	16	0	33%	0	67%	3
The Pas	25%	38%	9%	28%	32	59%	33%	2%	6%	49
Flin Flon					0	0	0	0	100%	12
Thompson	42%	29%	26%	2%	94	30%	35%	5%	29%	86
					1105					300
% of Total	52%	26%	7%	14%		34%	32%	4%	29%	
Total Cases**	(571)	(291)	(79)		(155)	(103)	(95)	(13)	(88)	

*Residence data are presented in terms of whether one, both or neither parties resided in the administrative/judicial centers where the documents were file

**Total Cases does not equal sample size because the residence of both parties was unknown in 9 Queen's Bench files and 1 Provincial Court file.

which the petition or application was filed. The results of this analysis are presented in Table 14.

Approximately one-half (52%) of all petitions filed in The Court of Queen's Bench regarding family matters involve cases where both the petitioner and the respondent reside in the center in which the petition was filed. This proportion varies greatly from center to center. In Winnipeg and St. Boniface the large majority of the petitions filed in the Family Division of The Court of Queen's Bench (65% and 63% respectively) involved cases where both parties resided in those centers. Thompson also had a significant proportion (42%) of petitions filed in The Court of Queen's Bench that pertained to cases where both parties resided in this center. In other centers, namely Selkirk, Swan River and Portage la Prairie, substantial proportions of petitions filed pertained to cases where neither the petitioner nor the respondent resided in the center in which the petition was filed (50%, 44% and 42% respectively).

In the Provincial Court the situation was somewhat different with only 34 percent of all applications filed pertaining to cases where both the applicant and respondent resided in the center in which the document was filed. Thirty-two percent of the applications filed pertained to cases where only the applicant lived in the center in which the document was filed, 4 percent pertained to cases where only the respondent lived in the center and 29 percent pertained to cases where neither the applicant nor the respondent resided in the center in which the application was filed.

These data also varied greatly from center to center. In The Pas fully 59 percent of applications filed involved cases where both parties actually resided in this community. Brandon also had a substantial proportion of applications (41%) that pertained to cases in which both parties resided in Brandon. In Thompson fairly equal proportions of applications filed involved cases in which

TABLE 15A

Description of Matters Requested in Petitions[1] Filed in the Court of Queen's Bench
By Administrative/Judicial Center

	Man	Wpg	St. Boniface	Selkirk	Brandon	Dauphin	Portage	Swan River	The Pas	Thompson
Divorce	67%	61%	55%	60%	62%	100%	98%	69%	100%	77%
Custody	57%	53%	70%	50%	58%	60%	60%	88%	41%	65%
Access	12%	10%	13%	12%	5%	5%	12%	19%	19%	32%
Exclusive Occupancy of Family Home	13%	14%	18%	19%	18%	0%	0%	19%	0%	15%
Financial Disclosure	23%	30%	29%	31%	22%	0%	0%	25%	0%	4%
Div. of Marital Property	19%	25%	22%	15%	21%	5%	0%	13%	0%	10%
Maintenance for Self	36%	36%	37%	46%	43%	60%	30%	44%	16%	19%
Maintenance for Children	47%	46%	56%	46%	47%	47%	50%	63%	25%	51%
Non-Cohabitation	25%	31%	31%	46%	24%	0%	0%	31%	0%	17%
Prohibition	24%	28%	24%	38%	28%	0%	3%	25%	0%	18%
Non-molestation	25%	29%	24%	42%	30%	12%	3%	25%	0%	19%
Costs	63%	60%	72%	54%	73%	63%	72%	44%	57%	63%
Separation	3%	3%	1%	4%	8%	0%	0%	0%	0%	4%
Police Assistance	4%	6%	3%	0%	1%	0%	2%	19%	0%	2%
Partition or Sale	6%	6%	3%	4%	10%	0%	0%	6%	0%	4%
Declaration of Parentage	3%	4%	9%	0%	0%	0%	0%	0%	0%	0%
Postponement of Sale of Marital Home	1%	1%	1%	0%	4%	0%	0%	0%	0%	0%
Guardianship	2%	3%	0%	0%	0%	0%	0%	0%	0%	0%
Sample Size	1105	595	87	26	152	43**	60	16	32**	94
Actual # of Petitions	4737	3868	87*	26	408	100	60	16*	49	94

1. This table presents those matters that were most frequently petitioned for in the Court of Queen's Bench. A complete listing can be found in Appendix B.

*Estimate only
**Divorce petitions only.

both parties resided in Thompson (30%), only the applicant resided in Thompson (35%) and neither parties resided in Thompson (29%). In Dauphin, a high proportion (52%) of application filed involved cases in which neither the applicant nor the respondent resided in this center. The number of Provincial Court files reviewed in the remaining communities was too small to provide for an analysis of the data.

A more detailed breakdown of the residence of the parties involved in the petitions and applications reviewed can be found in Appendices B and C.

c) Description of Petitions and Applications Filed:

Court of Queen's Bench

Most petitions filed in The Court of Queen's Bench (67%) include the matter of divorce (Table 15a). Other matters that are frequently petitioned for include: costs (63%), custody (57%), maintenance for children (47%) and maintenance for self (36%).

Matters petitioned for in The Court of Queen's Bench vary from center to center, reflecting to some extent the fact that the Provincial Court hears matters under the Family Maintenance Act in some centers. For example, 61 percent of all petitions filed in the Family Division of the Court of Queen's Bench in Winnipeg are for divorce compared to 98 percent in Portage and 77 percent in Thompson. (In Dauphin and The Pas only petitions for divorce were reviewed and the number of petitions that did not involve divorce is unknown).

Custody matters tend to be more prevalent in Swan River, St. Boniface and Thompson. Eighty-eight percent, 70 percent and 65 percent, respectively, of petitions reviewed in these centers pertained to the matter of custody.

TABLE 15B

Description of Matters Requested in Applications[1] Filed in the Provincial Court by Administrative/Judicial Center

	Man	Brandon	Dauphin	Portage	Swan River	Steinbach	Flin Flon	The Pas	Thompson
Separation	71%	61%	61%	62%	100%	0%	75%	88%	79%
Custody	82%	66%	88%	96%	100%	50%	92%	84%	90%
Access	15%	1%	6%	8%	0%	0%	17%	6%	41%
Declaration of Parentage	14%	7%	9%	46%	0%	100%	8%	22%	9%
Exclusive Occupancy of Family Home	2%	2%	6%	4%	0%	0%	0%	0%	1%
Financial Disclosures	21%	21%	0%	0%	0%	0%	67%	63%	7%
Maintenance for Self	45%	52%	67%	54%	33%	0%	58%	63%	16%
Maintenance for Children	68%	60%	82%	8%	33%	100%	75%	78%	59%
Prohibition	12%	10%	12%	31%	67%	0%	25%	14%	3%
Non-molestation	35%	54%	12%	46%	33%	0%	0%	45%	21%
Costs	63%	40%	64%	85%	0%	0%	67%	80%	74%
Police Assistance	3%	1%	0%	0%	0%	0%	0%	16%	0%
Sample Size	300	89	33	26	3	2	12	49	86
Actual # of Applications	625	349	33*	26	12	2	12	65	126

1. This table presents those matters that were most frequently applied for in the Provincial Court. A complete listing can be found in Appendix C.

*Estimate only.

TABLE 15C

Description of Matters Requested in Child Protection Applications
by Administrative/Judicial Center

	Man.	Wpg.	St. Boniface	Selkirk	Brandon	Dauphin	Portage	Swan River	Steinbach	Flin Flon	The Pas	Thompson
Protection	96%	99%	98%	78%	99%	100%	79%	89%	67%	90%	92%	95%
Further Hearing	6%	0	0	0	25%	9%	19%	4%	0	10%	9%	8%
Guardianship	3%	0	0	22%	0	0	0	11%	33%	0	6%	5%
Transfer of Guardianship	3%	8%	0	0	0	0	0	0	0	0	0	0
Sample Size	1046	423	46	9	122	43	47	27	3	21	114	191
Actual # of Applications	2402	1200*	46*	9	361	70	50*	88	3	21*	194	360

*Estimate only.

Provincial Court

The matter requested most frequently in the Provincial Court was custody (Table 15b). Eighty-two percent of all applications (excluding Child Protection applications) filed in the Provincial Court throughout the province involved custody. This was fairly consistent across all centers with the exception of Brandon. A somewhat smaller proportion of applications filed in the Provincial Court in Brandon (66%) involved the matter of custody. (Only 2 applications were reviewed in Steinbach. This does not provide for statistical comparisons of these data with those from other centers).

Other matters that were frequently requested in the Provincial Court were: separation (71%), maintenance for children (68%), costs (63%) and maintenance for self (45%). Substantially high proportions of applications filed in Flin Flon, The Pas and Thompson pertained to separation. Maintenance for self and children is most frequently applied for in Dauphin, Flin Flon and The Pas.

Child Protection

Child Protection applications largely involve protection matters (Table 15c). Ninety-six percent of all Child Protection applications throughout the province pertained to protection. Guardianship and transfer of guardianship were requested in a total of 6 percent of the applications.

d) Contested Issues:

The review of file data included the recording of information on answers or counter applications/petitions filed. Only answers or counter applications/petitions that were in response to a petition or application that was

TABLE 16A

Number of Answers/Counter Petitions Filed and Description of Contested Issues in the Court of Queen's Bench by Administrative/Judicial Center

	Man. Wpg.	St. Boniface	Selkirk	Brandon	Dauphin	Portage	Swan River	The Pas	Thompson
Answer on file	15% (166)	16% (98)	17% (15)	0 0	17% (26)	7% (3)	8% (5)	13% (2)	22% (7)	11% (10)
Matters Contested[1]:										
Divorce	18%	12%	13%		15%	33%	40%	50%	100%	10%
Custody	43%	44%	27%		46%	67%	0	50%	71%	50%
Access	13%	9%	27%		15%	0	40%	50%	0	10%
Declar. of Parentage	3%	4%	7%		0	0	0	0	0	0
Excl. Occup. of Family Home	11%	14%	13%		4%	0	0	0	0	10%
Financial Disclosure	10%	10%	7%		15%	0	0	50%	14%	0
Div. of Marital Prop.	18%	17%	0		35%	33%	0	50%	0	20%
Maintenance for Self	43%	40%	47%		46%	0	60%	50%	57%	60%
Maintenance for Children	36%	36%	27%		38%	0	0	50%	71%	40%
Non-Cohabitation	5%	5%	0		8%	0	0	50%	0	0
Prohibition	11%	13%	13%		17%	0	0	0	0	0
Non-molestation	8%	9%	7%		17%	0	0	0	0	0
Partition or Sale	10%	13%	7%		4%	0	0	0	0	10%
Costs	69%	63%	87%		77%	67%	40%	100%	86%	70%
Answers Withdrawn	60% (99)	58% (57)	53% (8)	0	73% (19)	33% (1)	60% (3)	100% (2)	43% (3)	86% (6)

1 Refers to matters most frequently contested. Complete information can be found in Appendix B. (Percents are calculated on the number of answers filed.)

TABLE 16B

Number of Answers/Counter Applications Filed and
Description of Contested F.M.A. Matters in the Provincial Court By
Administrative/Judicial Center

	Man	Brandon	Dauphin	Portage	Swan River	Steinbach	Flin Flon	The Pas	Thompson
Answer on File	17% (50)	13% (12)	15% (5)	8% (2)	33% (1)	0 0	33% (4)	31% (15)	13% (11)
Matters Contested[1]:									
Separation	34%	17%	40%	0	100%		50%	47%	27%
Custody	64%	58%	100%	0	100%		50%	53%	82%
Access	30%	8%	40%	0	100%		50%	40%	27%
Declaration of Parentage	12%	0	0	100%	0		0	20%	9%
Financial Disclosure	16%	17%	0	0	0		25%	27%	9%
Maintenance for Self	34%	25%	60%	0	0		75%	47%	9%
Maintenance for Children	48%	50%	80%	50%	100%		50%	47%	27%
Non-molestation	24%	33%	0	0	0		0	40%	18%
Costs	56%	33%	80%	100%	0		50%	60%	64%
Answers Withdrawn	84% (42)	92% (11)	100% (5)	100% (2)	100% (1)	0	50% (2)	93% (14)	64% (7)

1 Refers to matters most frequently contested. Complete information can be found in Appendix C. (Percents are calculated on the number of answers filed.)

filed in the one year study window were included in the sample. The findings pertaining to contested issues will be discussed in this section.

Court of Queen's Bench

In total, answers were filed in response to 15 percent of all petitions filed in the Court of Queen's Bench (petitions regarding family matters except child protection). This ranged from a high of 22 percent in The Pas to a low of 7 percent in Dauphin (Table 16a).

The issues contested most frequently include: costs (69%), custody (43%), access (43%) and maintenance for children (36%).

Table 16a also indicates the proportion of these answers that were withdrawn. Ninety-nine of the 166 answers filed in The Court of Queen's Bench throughout the province, or 60 percent were withdrawn.

Provincial Court

Proportionately, the number of answers or counter applications filed in the Provincial Court was comparable the proportion filed in the Court of Queen's Bench. Overall, answers were filed in response to 17 percent of the applications reviewed in the Provincial Court (Table 16b).

The issues contested most frequently in the Provincial Court include: custody (64%), costs (56%), maintenance for children (48%), separation (34%) and maintenance for self (34%).

Eighty-four percent of all answers filed in the Provincial Court were withdrawn.

TABLE 17

Average Number of Hearings, Motions and Maintenance Enforcement Hearings Per Case for each Administrative/Judicial Center

	Man.	Wpg.	St. Bon.	Selkirk	Brandon	Dauphin	Portage	Swan River	Steinbach	Flin Flon	The Pas	Thompson
Average Number of Hearings:												
Court of Queen's Bench (Divorce and FMA)	2.2	2.7	2.0	1.5	1.8	1.4	1.1	2.6	n/a	n/a	1.2	1.2
(Total # of Hearings)	(2387)	(1579)	(170)	(38)	(278)	(59)	(68)	(41)			(38)	(116)
Provincial Court (FMA)	2.0	n/a	n/a	n/a	2.5	1.1	1.8	2.3	2.2	1.4	1.7	2.2
(Total # of Hearings)	(605)				(222)	(36)	(46)	(7)	(5)	(17)	(82)	(190)
Child Protection	2.2	1.9	2.1	1.4	2.2	2.2	2.5	1.9	1.3	2.0	2.9	2.2
(Total # of Hearings)	(2216)	(796)	(95)	(11)	(267)	(95)	(115)	(48)	(4)	(42)	(331)	(412)
Average Number of Motions:												
Court of Queen's Bench (Divorce & FMA)	.6	.8	.5	.4	.5	.5	.2	.8	n/a	n/a	.1	.3
(Total # of Motions)	(663)	(448)	(47)	(11)	(81)	(23)	(9)	(12)			(4)	(28)
Provincial Court (FMA)	.3	n/a	n/a	n/a	.5	.1	0	1.7	0	.4	.5	.2
(Total # of Motions)	(95)				(45)	(3)	(0)	(5)	(0)	(5)	(22)	(15)
Child Protection	.05	.09	.09	0	0	0	.04	0	.3	0	.01	.02
(Total # of Motions)	(51)	(40)	(4)				(2)		(1)	(0)	(1)	(3)
Average Number of Enforcement Hearings:												
Provincial Court	.08	n/a	n/a	n/a	.15	.03	.12	0	0	0	0	.07
(Total # of Enforcement Hearings)	(23)				(13)	(1)	(3)					(6)

* (The average number of motions per case is substantially higher in Steinbach than in the other centers because the sample size (n = 3) was so small. In reality only 1 motion was filed.)

Child Protection

Child Protection applications are seldom contested. Answers were filed in response to only 2 percent (23 of the 1,046) applications filed throughout Manitoba. The majority of contested child protection matters are in Winnipeg. Twenty of the 23 contested child protection matters were in Winnipeg, 2 were in Dauphin and the remaining 1 was in Thompson.

e) Number of Hearings, Motions and Maintenance Enforcement Hearings:

The data regarding the average number of hearings, motions and maintenance enforcement hearings per case are presented in Table 17.

Hearings

The average number of hearings for matters heard in The Court of Queen's Bench (excluding child protection) was 2.2. Compared to matters heard by The Court of Queen's Bench in other centers, Winnipeg has the highest average number of hearings (2.7).

The average number of hearings in the Provincial Court was 2.0. This ranged from a high of 2.5 in Brandon to a low of 1.1 in Dauphin.

The average number of hearings for child protection matters was 2.2. Child protection matters heard in The Pas have the highest average number of hearings of all child protection matters heard by the courts throughout the province (2.9)

Motions

The average number of motions per case with respect to family proceedings (excluding child protection matters) was 0.6 in The Court of

Queen's Bench and 0.3 in the Provincial Court. In all centers the average number of motions in The Court of Queen's Bench was less than one per case. With the exception of Swan River, there was also an average of less than one motion per case in the Provincial Court. In Swan River there was an average of 1.7 motions per case however, only 3 applications were reviewed at that center. The number of motions filed with respect to child protection matters is very small. For all child protection matters throughout the province there were only, on average, 0.05 motions filed per case.

Motions filed in both The Court of Queen's Bench and the Provincial Court (excluding child protection) are typically for an order, an interim order or an exparte order (Appendix B and C). Motions for orders constitute about one-half of all motions filed in both Courts (48% and 53% of motions filed in The Court of Queen's Bench and in the Provincial Court respectively).

Motions for interim orders is the second most frequent type of motion filed in both courts. Twenty-nine percent and 23 percent of motions filed in The Court of Queen's Bench and the Provincial Court are for interim orders.

Motions for exparte orders make up 16 percent and 19 percent of all motions filed in The Court of Queen's Bench and in the Provincial Court respectively.

Maintenance Enforcement Hearings

Information on the number of maintenance enforcement hearings was obtained only from the Provincial Court. For the 300 Provincial Court files reviewed, there were only 23 maintenance enforcement hearings. This is an average of 0.08 maintenance enforcement hearings per case. These hearings occurred in Brandon, Dauphin, Portage la Prairie and Thompson.

TABLE 18A

Number of Orders Granted - Court of Queen's Bench

Court of Queen's Bench: (excluding child protection)	Man.	Wpg.	St. Bon.	Selkirk	Brandon	Dauphin	Portage	Swan River	The Pas	Thompson
Interim Orders										
0 orders	91%	90%	90%	88%	89%	98%	98%	88%	97%	95%
1 order	8%	9%	9%	8%	8%	2%	2%	12%	3%	5%
2 - 3 orders	1%	1%	1%	4%	3%	0	0	0	0	0
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total # of Interim Orders:	(115)	(71)	(10)	(4)	(20)	(1)	(1)	(2)	(1)	(5)
Exparte Orders:										
0 orders	96%	95%	92%	92%	99%	100%	100%	94%	100%	98%
1 order	3%	4%	5%	8%	1%	0	0	6%	0	2%
2+ orders	1%	1%	3%	0	0	0	0	0	0	0
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total # of Exparte Orders:	(54)	(40)	(10)	(2)	(1)	(0)	(0)	(1)	(0)	(0)
Consent Orders										
0 orders	88%	86%	79%	92%	86%	100%	97%	100%	100%	98%
1 order	11%	13%	19%	8%	13%	0	3%	0	0	2%
2 - 3 orders	1%	1%	2%	0	1%	0	0	0	0	0
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total # of Consent Orders:	(143)	(93)	(21)	(2)	(24)	(0)	(2)	(0)	(0)	(2)
Orders										
0 orders	75%	70%	72%	77%	79%	91%	88%	81%	94%	83%
1 order	19%	23%	25%	19%	16%	5%	12%	6%	6%	13%
2 orders	4%	5%	1%	4%	4%	2%	0	13%	0	4%
3+ orders	2%	2%	1%	0	1%	2%	0	0	0	0
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total # of Orders:	(356)	(239)	(30)	(7)	(39)	(7)	(7)	(5)	(2)	(20)
Decrees Nisi										
0 orders	47%	53%	53%	54%	46%	26%	18%	50%	34%	35%
1 order	53%	47%	47%	46%	54%	74%	82%	50%	66%	65%
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total # of Decrees Nisi:	(586)	(280)	(41)	(12)	(82)	(32)	(49)	(8)	(21)	(61)
Total # of Files:	(1105)	(595)	(87)	(26)	(152)	(43)	(60)	(16)	(32)	(94)

TABLE 18B

Number of Orders Granted - Provincial Court (FMA)

	Man	Brandon	Dauphin	Portage	Swan River	Steinbach	Flin Flon	The Pas	Thompson
Provincial Court (excluding child protection)									
Interim Orders:									
0 orders	91%	92%	97%	96%	67%	100%	83%	86%	90%
1 order	9%	8%	3%	4%	33%	0	17%	14%	10%
	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total # of interim orders	(32)	(8)	(1)	(1)	(1)	(0)	(2)	(8)	(11)
Exparte Orders:									
0 orders	99%	100%	100%	100%	100%	100%	100%	94%	100%
1 order	1%	0	0	0	0	0	0	6%	0
	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total # of exparte orders	(3)	(0)	(0)	(0)	(0)	(0)	(0)	(3)	(0)
Orders									
0 orders	61%	60%	70%	69%	67%	100%	67%	76%	48%
1 order	36%	38%	24%	31%	33%	0	33%	24%	49%
2+ orders	3%	2%	6%	0	0	0	0	0	3%
	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total # Orders	(124)	(38)	(13)	(8)	(1)	0	(4)	(12)	(48)
Consent Orders									
0 orders	77%	65%	91%	46%	67%	100%	83%	69%	97%
1 order	23%	35%	9%	54%	33%	0	17%	31%	3%
	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total # Consent Orders	(79)	(31)	(3)	(14)	(1)	(0)	(2)	(15)	(3)
(# of Files)	(300)	(89)	(33)	(26)	(3)	(2)	(12)	(49)	(86)

f) Number of Orders Granted:

For each file reviewed, the total number of orders granted within the one year study window were recorded. This information is presented in Tables 18a, 18b and 18c.

Court of Queen's Bench:

The 1,105 Court of Queen's Bench files that were reviewed (excluding child protection applications) included 115 interim orders, 54 exparte orders, 143 consent orders, 356 orders and 586 Decrees Nisi.

The proportion of The Court of Queen's Bench files reviewed that contained 1 or more of of each type of order is as follows: interim orders (9%), exparte orders (4%), consent orders (12%), orders (25%) and Decrees Nisi (53%).

Provincial Court:

The number and type of orders granted by the Provincial Court with respect to the 300 files that were reviewed include: orders (124), consent orders (79), interim orders (32) and exparte orders (3).

Provincial Court files were more likely to include consent orders than were the files of The Court of Queen's Bench. Twenty-three percent of the Provincial Court files reviewed contained a consent order compared to 12 percent of The Court of Queen's Bench files. The proportion of consent orders granted by the Provincial Court varied greatly between centers. The files reviewed in Portage la Prairie, Brandon, Swan River and The Pas, in descending order, were more likely to contain consent orders than Provincial Court files reviewed in other centers.

Table 18C

Outcome of Child Protection Matters

	Man.	Wpg.	St. Boniface	Selkirk	Brandon	Dauphin	Portage	Swan River	Steinbach	Flin Flon	The Pas	Thompson
Outcome:												
Order of Permanent Guardianship	7%	4%	7%	22%	14%	5%	19%	4%	33%	5%	7%	7%
Order of Temporary Guardianship	28%	16%	39%	11%	37%	36%	34%	22%	66%	43%	37%	36%
Order of Supervision	2%	0	2%	0	2%	2%	0	4%	0	5%	8%	2%
Order Denying Contact or Association	*	0	2%	0	0	0	0	0	0	0	0	0
Application Withdrawn	52%	69%	48%	66%	41%	27%	45%	44%	0	24%	37%	43%
Transferred to Other Court	10%	9%	0	0	4%	30%	2%	26%	0	14%	11%	12%
Case Incomplete (No order on file)	*	0	0	0	0	0	0	0	0	9%	0	0
Unknown	1%	2%	2%	0	2%	0	0	0	0	0	0	0
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
(Total # Files)	(1048)	(423)	(46)	(9)	(122)	(44)	(47)	(27)	(3)	(21)	(115)	(191)

*denotes less than 1 percent

Child Protection

The outcome of the Child Protection applications is indicated in Table 18c. About one-half (52%) of all child protection matters result in the application being withdrawn. A further 28 percent result in an order of temporary guardianship, 10 percent were transferred to another court, 7 percent resulted in an order of permanent guardianship and 2 percent resulted in an order of supervision.

The outcome of child protection varied between centers. The withdrawal of applications occurred more frequently in Winnipeg and Selkirk than in the other centers (69% and 66% of applications in Winnipeg and Selkirk respectively were withdrawn). The transferring of matters to another court was most common in Dauphin and Swan River (30% and 26% respectively).

g) Referrals to Mediation and Court-Ordered Assessments

Of The Court of Queen's Bench files reviewed, 2 percent involved referrals to mediation and 1 percent involved court-ordered assessments. Four percent of the Provincial Court files and 1 percent of the child protection files involved court-ordered assessments.

Of the 24 cases that were referred to mediation, 23 were in Winnipeg and 1 was in Brandon. With respect to court-ordered assessments (for family matters other than child protection), 11 of the 16 assessments ordered by The Court of Queen's Bench were in Winnipeg, 3 were in Brandon and 1 was in each of Dauphin and Swan River. In total there were 11 assessments ordered by the Provincial Court (for family matters other than child protection), 6 in Brandon, 3 in Thompson and 1 in each of Portage la Prairie and The Pas. Finally, there were 10 assessments ordered with respect to child protection matters. Five of these 10 assessments were ordered by the court in Winnipeg, 3

Table 19

Number of Cases Referred to Mediation and Court-Ordered Assessments: Court of Queen's Bench and Provincial Court

	Man.	Wpg.	St. Boniface	Selkirk	Brandon	Dauphin	Portage	Swan River	Steinbach	Flin Flon	The Pas	Thompson
Queen's Bench:												
Referred to Mediation	2% (24)	4% (23)	0	0	1% (1)	0	0	0	n/a	n/a	0	0
Court- Ordered Assessment	1% (16)	2% (11)	0	0	2% (3)	2% (1)	0	6% (1)	n/a	n/a	0	0
Provincial Court (FMA):												
Referred to Mediaton	0											
Court-Ordered Assessment	4% (11)	n/a	n/a	n/a	7% (6)	0	4% (1)	0	0	0	2% (1)	3% (3)
Child Protection:												
Court-Ordered Assessment	1% (10)	1% (5)	0	0	0	2% (1)	6% (3)	0	0	0	1% (1)	0
Total Assessments Ordered:	2% (37)	2% (16)	0	0	2% (9)	2% (2)	3% (4)	2% (1)	0	0	1% (2)	1% (3)

were ordered in Portage la Prairie and 1 was ordered in each of Dauphin and The Pas.

When reviewing the data pertaining to referrals to mediation, it should be noted that the files examined pertained to petitions and applications filed during the first year of operation of the Family Division of The Court of Queen's Bench. Family Conciliation was in the early stages of development during this year. As a result, the data collected cannot be considered to reflect a typical year or the present situation. Prior to the establishment of this service mediation was available only on a very limited basis.

h) Family Conciliation

It is recognized that some parties have contact with Family Conciliation without being referred by the Court. In order to determine the number of cases that did actually have contact with Family Conciliation, the 595 files from The Court of Queen's Bench in Winnipeg that were reviewed were cross-referenced with Family Conciliation's files. These data will be discussed in this section.

The purpose of reviewing Family Conciliation's files was to determine the demand for this service. It should be noted that an in depth evaluation of Family Conciliation is currently being carried out by the Federal Department of Justice. The results of this study will be available sometime in the near future.

Of the 595 files from The Court of Queen's Bench in Winnipeg that were reviewed (family matters other than child protection), 47 or 8 percent had contact of some type with Family Conciliation (Table 20).[5]

The nature of the contact parties had with Family Conciliation was classified as single contact, phone enquiry, conciliation counselling (counselling regarding the decision to separate or reconcile and regarding the

[5] A detailed presentation of these data can be found in Appendix E.

TABLE 20

Family Conciliation

Type of Contact:	Number
Mediation	32
Court-ordered Assessment	14
Conciliation Counselling	7
Phone Enquiry	3
Single Contact Case	1
	(n=47)

Source of Referral	Number
Lawyer	13
Judge*	11
Self	10
Master	8
Court-ordered**	8
	(n=47)

* Refers to cases where a judge refers a case for mediation.
** Refers to court-ordered home-study assessments.

adjustment to separation), court-ordered assessment and mediation (regarding custody and access). Also, parties may have had more than one type of contact with Family Conciliation (eg. mediation may have been attempted and failed and the court ordered an assessment).

Based on the 47 cases that had contact with Family Conciliation, the most common type of contact was for mediation. Thirty-two of the cases involved mediation, 14 involved a court-ordered assessment, 7 involved conciliation counselling, 3 were phone enquiries only and 1 was a single contact case. Excluding the 4 cases that did not have substantive contact with Family Conciliation (single contact and phone enquiries) and the assessments ordered with respect to child protection matters, the demand for the services of this program is estimated at 7 percent. That is, the services of Family Conciliation will be utilized by parties in approximately 7 percent of all family proceedings.

The sources of referral for cases that had contact with Family Conciliation were: lawyer (13), judge (11), self (10), Master (8) and court-ordered (8). It should be noted that one case can have more than one source of referral.

Answers had, at some point, been filed with respect to 20 of the cases that had contact with Family Conciliation. Of these 20, 10 had been withdrawn. It should be noted that this does not take into account the nature of the contested issues. Some of these answers may have been contesting issues other that custody and access, and the lack of a control group makes it impossible to say whether contact with Family Conciliation had any impact on the withdrawal of answers.

For those parties who actually attended Family Conciliation (n=34), the average number of meetings was 6.0 with a range from 1 to 12. The average length of time required for Family Conciliation to deal with a referral, that is, the

length of time between the date of referral to the date the file was closed was 91 days (based on the 33 cases for which information was available). The average length of time between the date of referral and the data of first contact was 16 days (based on 35 cases) and the average length of time from the date of first contact to the date the file was closed was 76 days (based on 40 cases).

Sixteen of the cases had resulted in an agreement and 10 had assessments completed.

V Discussion of Results and Recommendations

1. Summary of Findings

The major objectives of this research study were:

- To examine the effectiveness and efficiency of the current approach to dealing with family law matters outside the Eastern half of the province;

- To determine the effectiveness and efficiency of the Family Division of the Court of Queen's Bench;

- To determine the demand for a Family Division, Court of Queen's Bench outside the Eastern half of the province; and

- To gather statistical data on the distribution of family and child protection matters handled by the courts throughout the province.

Based on the findings of this research study, it can be concluded that the approach to dealing with family law matters outside the Eastern half of the province is not adequately meeting the needs of either family law practitioners or clients. There were five interrelated areas that were identified as problematic.

1. Accessibility - In the northern communities, accessibility of the courts for family matters was considered to be poor. It was maintained that limited accessibility was responsible for undue delays and unsatisfactory consent agreements.

2. Overlapping and Fragmented Jurisdiction - Inefficiencies and inconsistencies result from having two different courts dealing with family matters. This was perceived to be a major source of confusion on the part of clients, to encourage both "forum-shopping" and the practice of the obstruction

of justice, to create the potential for inconsistent judgments, and to cause inefficiencies in terms of duplication.

3. Inconsistent Rules and Procedures - The inconsistency of the rules and procedures creates unnecessary confusion for counsel and clients.

4. Low Status - It was indicated that family matters have very low status and often are given lowest priority by the courts outside the Eastern half of the province. Family and child protection matters are often tacked on to the end of a criminal docket and heard after the criminal matters have been dealt with. It was maintained that expecting a judge to "switch hats" at the end of a long day or week does not provide for quality hearings. The emotional nature of family matters often requires that a judge act as mediator, counsellor as well as judge. The diversity of these roles and the increasing complexity of family law suggests that such matters demand an extensive amount of concentration and skill on the part of the judge.

5. A Lack of Social Services - Finally, a lack of social services was identified as one of the major shortcomings, if not the most problematic shortcoming of the current approach to dealing with family matters outside of the Eastern half of the province. Assessments are rarely ordered due to a lack of trained staff, and because no particular group or body is mandated to to carry out this task. Both family law practitioners and judges indicated that a lack of social services caused social problems to be handled in a legal context, resulting in a great disservice to the parties involved.

Overall, it was perceived that the expansion of the Family Division of the Court of Queen's Bench would be a better means of dealing with family matters than the current approach. There was skepticism however, that the resources necessary to make the Family Division viable in rural areas would be provided. In particular, respondents were concerned about the accessibility of the Court and the availability of social services. Many respondents felt very strongly about the need for social services and they indicated that they would not support the expansion of the Family Division unless social services were part of the expanded system.

An obvious question that arises in any discussion of the expansion of the Family Division is: "How effective and efficient is this court?" Based on the information that was gathered from family law practitioners and the judges and master of this court, it can be concluded that the Family Division is an effective means of dealing with the resolution of family disputes. The "unified family court" concept is strongly supported and "family specialist" judges and masters are perceived to be crucial components of a family court.

While overall family law practitioners expressed a fairly high level of satisfaction with the Family Division, there are some administrative or operational problems that were believed to create inconveniences to practitioners and their clients, and to cause legal fees to be higher than necessary. The problematic areas that were identified were the registry function of the Deputy Registrar's Office and the scheduling of motions, appearances before the referee and pre-trial conferences. Practitioners perceive the Family Division to be backlogged in the processing of court orders, and they consider the length of time they and their clients must wait for hearings, particularly pre-trial conferences, to be unsatisfactory. The inaccessibility of the Court during

the summer months was also of concern to practitioners. The Deputy Registrar's Office was criticized for providing a poor quality of service.

2. Recommendations

There are fourteen major recommendations that emerge from the findings of this research study. The intent of these recommendations is to improve family court services in Manitoba. These recommendations fall under three major categories: family court services outside of the Eastern half of the province, the Family Division of the Court of Queen's Bench, and the Deputy Registrar's Office.

Outside the Eastern Half of the Province:

Recommendation 1: Expand the Family Division of the Court of Queen's Bench to the remainder of the province.

The research results indicate that judges and family law practitioners outside the Eastern half of the province believe that the current approach to dealing with family law and child protection matters is less than adequate. Further, there is a fairly high level of support for expanding the Family Division of the Court of Queen's Bench, and it was generally acknowledged that if implemented with sufficient resources, the Family Division would offer a quality of service that is superior to that currently being provided. Finally, aside from some administrative and operational problems, there is evidence that the Family Division is an effective means of dealing with family law matters.

With respect to how this court should be expanded to best serve Manitobans who reside outside the Eastern half of this province, there are

several factors to be taken into consideration (ex. accessibility, quality of service, efficiency, cost of service delivery). It is possible to develop several different viable service delivery models. However, each model has relative strengths and weaknesses and there is not any one particular model that is "best" from the perspective of both effectiveness and efficiency. That is, the approach that would render the most accessible services would not necessarily provide the highest quality of services. The complexity of and the number of practical as well as political issues involved in this matter suggests that the decision regarding the model of expansion should be made in consultation with the judiciary, members of the Bar and Court Services.

Recommendation 2: A resident judge of the Family Division of the Court of Queen's Bench in Brandon.

A further issue relating to the best means of expanding the Family Division is the residency of judges. Our recommendation with respect to this issue is dependent on how the court is expanded. If Provincial Court judges are to continue to hear family and child protection matters outside the Eastern half of the province, it would not be necessary to have judges of the Family Division reside outside of Winnipeg and Brandon. This is based on case load statistics which indicate that there is not enough work in any administrative or judicial center other than Winnipeg and Brandon, to justify a resident Family Division judge. On the other hand, if the Provincial Court ceases to hear family and child protection matters, it will be necessary to have judges of the Family Division residing in communities other than Winnipeg and Brandon. Regardless of the method of expansion, case load statistics for Brandon justify a resident Family

Division judge. It would also be important for the Family Division to maintain a presence in this community.

Recommendation 3: Expand the social service component of the Family Division of The Court of Queen's Bench (Family Conciliation), to serve the remainder of the province, as recommended by judges and lawyers interviewed.

The findings of this report indicate that judges and lawyers feel strongly that there is an urgent need for social services outside the Eastern half of the province. The development of an organized, accessible, high quality social service program was strongly suggested by respondents. Although family law practitioners criticized Family Conciliation for what they perceived to be a lack of consistency in the techniques and procedures used and in the skills and expertise of the staff, they did indicate that overall this program was providing a useful, fairly effective service. This suggests that this program could meet the social service needs of residents of the remainder of the province. As well, the findings of this research study indicate that there would be a high level of resistance to the expansion the Family Division if the social service component of this court were not also expanded.

Recommendation 4: The dissemination of information regarding the philosophy behind a "unified family court" and rules and procedures of the Family Division, and the establishment of an open line of communication between lawyers, judges and Court Services staff.

A decision to expand the Family Division should be accompanied with an information dissemination plan for family law practitioners. Through the process

of carrying out this research study it was discovered that family law practitioners outside the Eastern half of the province would like to be consulted on issues, and that there is a lack of information and misinformation on matters related to the courts and the rules and procedures. Practicing law outside of Winnipeg does not provide most lawyers the opportunity of specializing in family law. As a result there are a large number of lawyers who each practice a little family law. This, presumably, makes it more difficult for a lawyer to keep up-to-date in changes to legislation, rules and procedures.

In Winnipeg the judges of the Family Division and family law practitioners hold breakfast meetings on a regular basis. This is found to be a useful means of informing the profession of changes to legislation, rules and procedures and Practice Directives, and it provides the forum for practitioners to voice their concerns and complaints. This open line of communication between the key actors provides the court with the ability to respond very quickly to problems.

The Family Division of The Court of Queen's Bench:

Recommendation 5: Implement a new scheduling procedure that will decrease the length of time counsel and clients have to wait for pre-trial conferences.

Recommendation 6: Conduct a more detailed review of the scheduling of appearances before the referee and the hearing of motions to determine the acceptability of the waiting time for clients and counsel. Implement improvements to this system if necessary.

Recommendation 7: Attempt to increase the accessibility of the Family Division for matters of an emergency nature, and streamline the system for uncontested matters.

Recommendation 8: Attempt to increase the accessibility of the Family Division during the summer months.

Recommendation 9: Training programs and workshops designed to develop and improve the mediation skills of the Judges of the Family Division should be established and conducted on an on-going basis.

Recommendation 10: The operation of the Family Division of the Court of Queen's Bench should be improved and the problems identified in this research study should be addressed prior to any expansion of this Court to the remainder of the province.

The major areas of dissatisfaction with respect to the Family Division were backlogs, the scheduling of the hearing of motions, appearances before the referee and pre-trial conferences, and the complexity of the system. It was believed that the Family Division generally has a backlog of cases, and that the limited accessibility of the Court during the summer months is an unnecessary cause of hardship and inconvenience. Complaints regarding the scheduling of hearings pertained to the waiting time for counsel and clients. Long waiting times were believed to be an unreasonable inconvenience and to result in unnecessarily high legal fees. With respect to pre-trial conferences, there is a great deal of consensus among practitioners and judges of the Family Division that the waiting time should be reduced. There was some question however,

whether the waiting time with respect to the hearing of motions and appearances before the referee was too long, or whether counsel had unreasonable expectations. Since the nature of the findings of this study are impressionistic, they do not indicate the actual waiting time for us to determine what is considered to be an unreasonable length of time. This is an area that requires further investigation.

With respect the second area, both Winnipeg and rural family law practitioners expressed some concern that the forms and procedures of the Family Division do not provide for quick and easy access to this court for matters of an emergency nature. Lawyers outside of Winnipeg were particularly concerned about the amount of detailed information necessary to get into court, and the requirement for affidavit evidence. Further, it was perceived that many of the mandatory steps or procedures, such as appearances before the referee, were unnecessary in many cases (i.e. when no issues are contested). It was suggested that if the system was streamlined, or if there was a decrease in the number of steps required to get a matter heard, the Family Division could more efficiently deal with matters of an emergency nature, and in uncontested cases, legal fees and the amount of inconvenience could be reduced.

It is important that the Family Division's operational problems or inconveniences be addressed prior to the expansion of this court. It would be undesirable to expand the imperfections of the system, and it is quite possible that operational procedures that create delays and inconveniences in Winnipeg will create even more serious delays and inconveniences in smaller communities where there is a lower level of accessibility to the court.

Deputy Registrar's Office:

Recommendation 11: Conduct training programs and workshops with the registry staff of the Deputy Registrar's Office to improve their abilities to carry out their responsibilities in a more informed and friendly manner.

Recommendation 12: Establish a consistent filing system province-wide for family and child protection matters.

Recommendation 13: Develop a system for the on-going gathering of statistics on family and child protection matters throughout the province.

Recommendation 14: Management consultants should be hired to provide advice and recommendations regarding the Deputy Registrar's Office. The two major areas that should be addressed by consultants are the problems of the Deputy Registrar's Office in Winnipeg, and the impact the expansion of the Family Division of the Court of Queen's Bench would have on the Court offices outside of Winnipeg. Ideally this review would include the issues addressed in recommendations 11 through 13.

The findings of this research also revealed major dissatisfaction on the part of Winnipeg family law practitioners with the registry function of the Deputy Registrar's Office. The services provided were perceived to be inconsistent and there were numerous complaints about the attitude and abilities of the some of the staff. This is a serious problem as it has the potential to cause delays in getting matters dealt with, unnecessary inconveniences and frustration. As the Deputy Registrar's Office is the point of entry to the Family Division, the service provided by this office reflects on the Court. Thus, it is important that this office provide high quality, efficient service.

A further issue with respect to the Deputy Registrar's Office pertains to the filing systems. Data collection on family matters in Manitoba is extremely difficult because there are two separate courts that deal with family matters and there is no consistency in the systems used to file documents. Filing systems not only differ between these two courts, but also between administrative and judicial centers.

Related to this issue is the fact that the Deputy Registrar's Office does not provide, on a regular basis, statistics on family and child protection matters. The implementation of an ongoing statistics gathering system should be given serious consideration as it would assist Court Services to plan service delivery.

Apparently the problems identified with respect to the Deputy Registrar's Office have existed for a long time and seem to be entrenched in the system. It has been stated that attempts have been made to remedy the problems however, such attempts have evidently failed. The magnitude and nature of these problems suggests that fairly extensive changes may be necessary.

It is recommended that an agency or individual with expertise in the area of management systems should be consulted regarding first, the existing problems of the Deputy Registrar's Office and second, the impact the expansion of the Court will have on the Court offices outside of Winnipeg. The consultant's role will be to make recommendations on how to improve the Winnipeg office, and to provide advice on systems and procedures that will assist the remaining Court offices throughout the province to most effectively and efficiently accomodate the Family Division of the Court of Queen's Bench. An external person or firm is recommended for this task for the following reasons: the current management of the Deputy Registrar's Office cannot be expected to have the time or expertise to conduct a province-wide review of this office; the Research, Planning and Evaluation Branch of the Department of the Attorney

General does not have expertise in the area of management systems and procedures and; an external agency will perhaps be more objective and could offer a "total approach" to solving the problems as opposed to a "piecemeal approach".

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GLOSSARY

DEPUTY REGISTRAR -

Deputy Registrar's perform a variety of functions within the Courts. Deputy Registrar is actually a judicial title as opposed to a job description. That is, different Deputy Registrars' perform different functions. For example, the Trial Coordinator and Motions Coordinator are Deputy Registrar's, and the staff who register and issue documents at the counter in the Court Office registering documents are Deputy Registrar's.

The role of a Registry Officer is to register and/or issue all types of court documents, after perusing these documents for compliance with the rules. The role of a Senior Registry Officer is a technical position in specialized areas, dealing with complex and difficult court procedural matters.

A Deputy Registrar currently presides over motions court for the Family Division of the Court of Queen's Bench. This involves adjourning matters, referring contested matters to the Master and uncontesed matters to a Judge.

DEPUTY REGISTRAR'S OFFICE -

The term "Deputy Registrar's Office" has been used in this report to refer to the registry function performed by the Court Operation. It is important to note that the Court Operation involves more than the registry function. Motions Coordinators, Trial Coordinators, and support services (Court Clerks, typists, etc) also are part of the Court Operation.

The registry function performed by the Court Operation has been defined above under the discussion of the Deputy Registrar. The Motions Coordinator is essentially responsible for the coordination of applications (interim applications or variations of final orders). Similarly, Trial Coordinators coordinate the scheduling of pretrials and trials.

FAMILY CONCILIATION -

Family Conciliation is a professionally staffed counselling program which provides assistance to individuals and families going through mariage breakdown (the decision to separate or reconcile and adjustment to separation), mediation of custody and access disputes, and when ordered to do so by the court, provides assessments and recommendations in matters involving the custody of access to children, or in child protection matters. Mediation involves having parents work with a trained and impartial mediator to come to an agreement that is satisfactory to both parents, regarding the custody and access of their children.

Family Conciliation operates in conjuction with the Family Division of the Court of Queen's Bench, and as in the case of the Family Division, operates in a limited area of Manitoba. The counsellors employed by Family Conciliation are employees of the Department of Community Services and are appointed as officers of the court and designated "conciliation officers" and "family investigators".

Essentially all cases where custody and/or access are in dispute are referred by the Court to Family Conciliation for mediation. If the parties do not attend mediation or if mediation is unsuccessful, Family Conciliation may be requested to carry out an assessment. Parties may be referred to Family Conciliation by someone other than a judge or Master (i.e. counsel), or they may make the decision to use this service on their own.

FAMILY DIVISION OF THE COURT OF QUEEN'S BENCH -

The Family Division of The Court of Queen's Bench was established on July 1, 1984. The major purpose of this new Division is to allow all family law matters to be dealt with by one specialized Court. At present the Family Division is comprised of the Associate Chief Justice of the Family Division, 5 Court of Queen's Bench judges and one Master. These judges and the Master deal only with family law matters. In addition, Judges and Masters of the Court of Queen's Bench (excluding the Family Division) also hear family matters on a need basis.

The Family Division operates in a limited area in the province. In Winnipeg, St. Boniface and Selkirk the Family Division has exclusive jurisdiction over all family law matters. Within the "Eastern half of the province", but outside of the 3 communities mentioned above, the Family Division has concurrent jurisdicition with the Provincial Court over those family law matters that are within the jurisdiction of the Provincial Court.

MASTER -

The Family Division Master functions under the authority of The Queen's Bench Act and Regulations to the Act (Queen's Bench Rules). Within this authority, the Master adjudicates and makes dispositions on matters brought to the Court under various statutes which include, but are not restricted to: The Family Maintenance Act; Child and Family Services Act; The Marital Property Act;The Divorce Act; and The Law of Property Act. Presently there is one Master functioning within the Family Division, Court of Queen's Bench and two Masters within the Court of Queen's Bench. The Family Division Master deals exclusively with family matters while the Masters of the Court of Queen's Bench (excluding the Family Division of this Court) deal with family matters only occasionally. Unlike judges, Masters are civil servants of the Province.

The adjudication and disposition role includes the following:

Child Protection Dockets

Dispositions on evidence are made on contested and uncontested motions concerning:

*Substitutional service

*Dispensing with service

*Further particulars

*Adjournments

*Enlargement of time limits

*Transfer of proceedings to other jurisdictions

*Filing extensions beyond allowable period

*Consent orders of supervision or temporary guardianship

Enforcement of Maintenance Orders

The Master presides over maintenance enforcement lists and performs the following functions:

*Following viva voce evidence and considerations of fact and law, the Master determines the amount of arrears and whether the respondent has shown cause for failure to comply.

*Possible dispositions include the making of default orders, appointment of a receiver and imprisonment.

References

The Master conducts judicial inquiries on matters referred by a Judge. The reference may be made before, after or during a trial. References are made for the following:

*Accounting, an asset valuation and the determination of divisional shares based on the requirements of The Marital Property Act.

*Sale of real property under the approbation of the Master. Under this reference the Master has the power to direct the method of sale; to take account of money, rents and profit; to set rent; to take into account necessary repairs, costs and other expenses and to report special circumstances.

*Under these references the Master may cause parties to be examined and may compel production pursuant to Queen's Bench Rules.

Motions

The Master disposes of certain contested or uncontested interim applications which are brought by motion including: security for costs; substitutional service; striking of pleadings; compelling further discovery; particulars; abridgement or extension of time; the setting aside of default; and production and inspection.

Some motions are diverted from the Judges' Motions List to the Master for disposition with respect to contested applications for adjournment; applications for assessment report from family investigator; and applications for referral to Family Conciliation.

Pre-trials

The Master presides over a list of pre-trials. Following an answer to a petition and when requested by the Court or one party, both parties and solicitors appear before a Master to:

*Consider an order of referral for mediation or assessment and report.

*Obtain direction to the further conduct of proceedings.

*Clarify issues.

*Explore settlement possibilities.

*Set pre-trial dates.

Fiats

The Master fiats applications for Decrees Absolute (in divorce matters prior to June/86) and Interim Consent Orders.

PRE-TRIAL CONFERENCES

A pre-trial conference, or a "pre-trial", is the last attempt within the structure of the Family Division of the Court of Queen's Bench to resolve a family dispute without going to trial. Pre-trial conferences are scheduled in all cases where there are contested matters that could not be resolved through alternate means (i.e. mediation). A trial date will not be set unless resolution through a pre-trial conference has been attempted.

Judges of the Family Division preside over all pre-trials. If in the end a trial is necessary, the judge who presided over the pre-trial may not hear the trial. During the pre-trial conference, both counsel and clients must be present. The proceedings are confidential and are without prejudice. The intent of a pre-trial conference is to provide an opportunity for discussion of the

issues and to attempt to resolve the issues in a less formal atmosphere than is possible during a trial. It also provides clients with some indication of how a judge will view their case.

At the conclusion of the discussion, the conference is adjourned for an hour or so to enable counsel and clients to confer and for negotiations between counsel. The end result may be an adjournment of the pre-trial to a later date, the scheduling of a trial date, or a consent agreement may be negotiated.